He Gazette of India

प्राधिकार से प्रकाशित हास्य प्रसारक BY AUTHORITY

साप्ताहिक WEEKLY

सं, 31) No.31} वह दिल्ली, जुलाई 24—अगस्त 4, 2007, शमिबार/बाक्या 7—आवण 13, 1929

NEW DELHI, JULY 29—AUGUST 4, 2007, SATURDAY/SRAVANA 7—SRAVANA 13, 1929

इस भाग में भिन्न पुष्ठ संख्या दी जाती है जिससे कि यह पृष्टक संकलन के रूप में रखा जा सके Separate Paging is given to this Part in order that it may be filed as a separate compilation

> भाग [[—खण्ड ३—वंप-वंपड (II) PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को स्नेडकर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं Statutory Orders and Notifications issued by the Ministries of the Government of India (Other than the Ministry of Defence)

वित्त मंत्रालय

(विजीव सेव्हर्ष विश्वर)

नई दिस्सी, 27 जुलई, 2007

का.आ, 2127 .—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीण उपर्धंध) स्टर्शभ, 1970/1980 के खण्ड 3 के तम खण्ड (1) और खण्ड 8 के उप खण्ड (1) के साथ पित बैंककारी कंपनी (उपक्रमों का अर्थन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उपधार 3 के खण्ड (क) हारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतदहुए, कारतीय दिवर्ष बैंक के परापर्श से, पर्तपान में इलाइम्बर कैंक के कार्यपालक निदेशक श्री एस. को गोयल (जन्म तिथि 22 9-1953) को । अगस्त, 2007 को या उससे बाद उनके परधार ग्रहण करने की तारीख से और 30-9-2010 तक, अर्थान् महीने के अंतिम दिन, जिस दिन से अधिवर्षिता की आधु पूरी करेंगे अथवा

अगला आदेश होने ठक, जो भी पहले हो, युको बैंक के अध्यक्ष एवं प्रदेध निदेशक के रूप में नियुक्त करती हैं ।

> [का. सं. 9/24/2006-वीओ-1] जी. जी. सिंह, उप सचिव

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 27th July, 2007

8.0. 2127.—In exercise of the powers conferred by clause (a) of sub-section (3) of Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 read with sub-clause (1) of clause 3 and sub-clause (1) of clause 8 of the Nationalized Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government, in consultation with

(4815)

3288 GM**200**7

the Reserve Bank of India, hereby appoints Shri S K. Goel (DoB 22 9-1950) presently Executive Director. Allahabad Bank as Chairman & Managing Director. UCO Bank for a period from the date of his taking charge of the post on or after 1st August. 2007 and tipto 30-9-2010 i.e. the last day of the month in which he would attain the age of superannuttion or until further orders, whichever is earlier

(F.No. 9/24/2006-BO-1) G.B. SINGH, Dy. Segv.

स्थास्थ्य और परिवार करूबाण मंत्रात्स्य

(स्वास्ट्य विभाग)

नई विश्ली, 12 जुलाई, 2007

का.आ. 2128.— भारतीय आयुर्विज्ञान परिषद् अधिनियम, 1956 1:953 को 102) की धास () की उप धास (2) द्वारा प्रदक्त शिक्तयों का प्रयोग करते हुए केन्द्र सरकार भारतीय अवसुर्विज्ञान परिषद से एस्टिश करते के बाद एतद्वास उक्त आधिनियम की प्रथम अनुसूची में विम्निशिवित और संशोधन करती हैं, अर्थात :

उक्त अनुसूची में--

(के : "दिल्ली विश्वविद्यालय" के सामने 'मान्यता प्राप्त अधुर्विज्ञान अर्हना' [१सकं याद स्तंभ (2) के रूप में संदर्भित] शीर्ष के अन्तरंत अंग्रिंतम प्रविध्ति और 'पंजीकरण के लिए मंद्रेष्णण' (इसकं बाद स्तंभ (1) के रूप में संदर्भित] शोर्ष के अर्न्तगत उससे मंद्रश्र प्रविधिद के भीर, निम्मिलिखित रखा आएगा, अर्थात् : -

भारकी

(2)	(3)
अःक्टर ऑफ.मेडिडिसन, ४ प्रसृद्धि एवं श्रि रोग विज्ञान) । ।	एम. डो. (अं. बी. जो.) (यह एक मान्यता प्राप्त आयुर्विहान अर्हता होनी चदि यह सफदर रंग अस्पताल, नई दिल्ली में प्रशिक्षित छात्रों के संबंध में दिल्ली विश्व- विद्यालय हास प्रदान की गई हो:
प्रसृष्टि इन स्थी रोग विज्ञान में दिख्लां क ं : : 	ही. जो. अरे. (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्रता होगी यदि यह सफदरजंग अस्पताल, नई दिल्ली में प्रशिक्षित छात्रों के संबंध में दिल्ली विश्व- विद्यालय द्वारा प्रदान की गई हो:

(स. यू. 12012/14/2007-**एव ई** (फी-1)) पार्टी

एस. क. मिश्रा, अंतर सचिव

MINISTRY OF HEALTH AND FAMILY WELFARE. (Department of Health)

New Delhi, the 12th July, 2007

S.O. 2128.—In exercise of the powers conferred by sub-section (2) of the Section 11 of the Indian Medical Council Act. 1956 (102 of 1956), the Central Government, after consulting the Medical Council of India, hereby makes the following further amendments in the First Schedule to the said Act, namely:—

In the said Schedule---

(a) against "Delhi University", under the heading 'Recognized Medical Qualification' [hereinafter referred to as column (2)], after the last entry and entry relating therein under the heading 'Abbreviation for Registration' [hereinafter referred to as culumn (3)], the following shall be inserted, namely:

TABLE

(2)	G:
"Doctor of Medicine	MD(O.B.G.)
(Obst. & Gynag.)"	(This shall be a recognized medical qualification when grampil by Delhi Emversity to respect of students trained at Safdatjung Hospital, New Delhi
"Diploma in Obsi. &	D.G.O.
Gynae."	(This shall be a recognized medical qualification when granted by Delhi University in respect of students trained at Safdarjung Hospital, New Delhi.

(No. U. (2012/34/2007-ME/P-III:pc)

S. K. MISHRA, Under Secy.

फोत्त परिवहन, सङ्क परिवहन और राजमार्ग भंजालय

(पटेत परिकारन विकास)

(ग्रहापकः 📙 अनुष्यम्)

नई दिल्ली, ३। जून, 2007

का.आ, 2129, -फाइल सं एच-11020/2/2005 स्थापना और 1-35019/3/2006 अगर टी.आई. के अंतर्गत जारी किए गए दिनांक 30 स्लिम्बर, 2005. दिनांक । सितम्बर, 2006 के का.आ. सं 1443(अ.) में अर्जेक्क आशोधन करकं तथा सामान्य खण्ड अधिनियम, 1897 (1897 का 10) की धारा 22 के साथ प्रस्ति सूचना के अधिकार, अधिनियम, 2005 (2003 का 22) की धारा 19 की संपर्धरा (1) के अनुसरण में, पीत परिवहन, सड़क-परिवटन और राज्यार्ग मंत्रालय का पीत परिषद्भ विभाग (मुख्यालय), एसदृद्धारा, निम्नीलिखेस अधिकारियो को नामोद्दिष्ट करता है :--

- (i) श्री पी. सो. धीयन के स्थान पर त्री राजीव मुखा, संयुक्त सचित्र (पीठ परिवहन) (दूरपाप सं-23710189) (कपर) सं 406) परिवटन भवन, नई दिल्ली- 110001 को ऑस्ट्रेरीय जल परिवहत और पोत निर्माण तथा पोत मरम्मत सहित पोत परिवहन स्कंभ से संबंधित सभी मामलों के संबंध में अपील अधिकारी के रूप क्रों।
- (ii) ओ अञ्चय कुमार पल्ला के स्वान पर ओ सकेश श्रीवास्तव, सं**युक्त सरिव** (पत्तक/प्रशासन) (दूरभाव सं-2371)873) (कमरा मं, 431) परिवहन भवन, नई दिल्ली-110001 को पेल परिवहन विभाग के मुख्यालय के अधिकारियों और कर्मचारियों के प्रशासनिक फहलुओं से भंजियत सभी पापरलें और महापत्तन न्वासो, अंडमान लक्ष्द्वीप वंदरमहः निर्माण कार्य और महापत्तन प्रशुलक प्रशिकरण से संबंधित सभी मामलों के संबंध में अपील अभिकारी के रूप 幸工

[फा, सं. 1-35019/3/2006-सूचना का अधिकार] स्भाष चन्द्र, अवर सचिव

MINISTRY OF SHIPPING, ROAD TRANSPORT AND HIGHWAYS

(Department of Shipping)

(E. sablishment-II Section)

New Delhi, the 21st June, 2007

S.O. 2139.—In Partial modification of S.O. 1443(E) dated 300: September, 2005, 1st September, 2006 issued ander 11, No. 11-11020/2/2005-Eatt, and I 35019/3/2006-RTI respicatively and in pursuance of Sub-Section (1) of Section 19 of the Right to Information Act. 2005 (22 of 20(6) read with Section 22 of the General Clauses Act, 1897 (30 of 1897), the Department of Shipping (Headquarters). Ministry of Shipping, Road Transport & Highways hereby designates : -

- (i) Shri Rajeev Gupta, Joint Secretary (Shipping) (Tel No. 237101891 (Room No. 406), Transport Bhavan, New Delhi-110001 as Appellate Authority (AA) for all matters concerning Shipping Wing including Inland Water Transport. (TWT) and Ship Ruilding and Ship Repair in place of Shri P. C. Dhiman.
- (ii) Shri Rakesh Srivasiava, Joint Secretary (Admn. & Ports) (Tel No. 23711873) (Room No. 411),

Transport Bhavan, New Delhi-110001 as Appellate Authority (AA) for all matters concerning Administrative aspects of the Officers and Staff of the Headquarters of the Department of Shipping and all matters concerning Major Ports and Andaman Lakshadweep Harbour Works (ALHW), Tariff Authority for Major Ports (TAMP) in place of Shri A. K. Bhalla.

[F. No. I-35019/3/2006-RTT]

SUBHASH CHAND, Under Socy.

वस्य पंत्रालय

न**ई दिस्सी**, 30 बुंलाई, 2007

का,आ, 2130 .-कंदीय रेशम केंद्र अधिनियम, 1948 (1948 का 6)) को धारा 4 की उप-धारा (3) प्रदत्त शक्तियों का प्रयोग करते हुए, केंद्र मस्कार, एतदहारा उक्त अधिनिधम के प्राथधानों के अध्यधीन इस अधिसूचना की तिथि से तौन वर्षों की अवधि के लिए कंडीय रेशम बोर्ड के सदस्य के रूप में कार्य करने के लिए निम्नश्लि**खर** व्यक्ति का नामांकन अधिसृष्टित करती है ।

ं हंपर्युषतः अर्ध्धनियम की धारा श्री किंतारेक्डी जीनिवास्त रेक्डी. गांव बादकरपरली, मिर्द्यासमुद्धा मंद्रल, जिला नलगोंडा (आंध्र प्रदेश)

4(३)(जं) के अंतर्गत केंद्र सरकार ४३१) नामित

[फा.स. 25012/56/99-रे**ल**4]

भूपन्द्र सिंह, संयुक्त सन्दिव

MINISTRY OF TEXTELES

New Dothi, the 30th July, 2007

S.O. 2130.—In exercise of the powers conferred by sub-section (3) of Section 4 of the Central Silk Board Act. 1948, the Central Covernment hereby sotifies the nomination of the following person to serve as member of the Central Silk Bourd for a period of three years from the date of this polification subject to the provisions of the said Act.

Shei Ch. Srimiyasa Reddy. Yadgarbally village ... Miryalguda Mandal, Nalgonda District (AP)

Nominated by the Central Government under Section 4(3)(j) of the Act.

[F. No. 25012/56/99-Silk]

BHUPENIDRA SINGH, J. Secy.

व्ययोक्त मामले, खाच और सार्वजनिक वितरण मंत्रालय

(उपमोक्ता पापले कियाग)

भारतीय मानक ब्यूरी

नई दिल्ली, 23 जुलाई, 2007

का,आ, 2131, -भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के नियम (5) के उप-नियम (6) के अनुसरण में भारतीय मानक व्यूगे एतदृद्वारा अधिमृचित करता है कि निम्न विवरण वाले लाइसेन्सों को उनके आगे दर्शायी गई तारीख से रह कर दिया गया है ;--

क्रम सं. 	साहसेंस नं.	लाइसेन्सभारी का नाम व पता	लाइसेन्स के अंतर्गत वस्तु/प्रक्रम से संबोधित भारतीय जातक कः शीपंक व संबोधित था. पा.	रह करने की तिथि
	ब् न, 2007	"		·
0 1.	8119493	मैसर्स यं. आर. रोलिंग मिल्स (ग्रा.) लि. प्लॉट नं. एस. 707, रोड नं. 6, वि. औ. क्षेत्र, जयपुर-302 013 (राजस्थान)	8500 : 1991 स्टुक्बरल स्टोज	21 46-2007
12.	87937]]	पैसर्स श्री अग्रसेन इण्डस्ट्रीज, ई-293 (ए), रोड नं. 14 वि. औ. क्षेत्र, जयपुर-302 013 (राजस्थान)	398 (भाग 2) : 1996 एसी एस अस्	08-06-2007

[सं.सीएमडी/(3:)3]

. ७ के तलबार, ७४ महानिदेशक (मुहर)

MENISTRY OF CONSUMER AFFAIRS, FOODAND PUBLIC DISTRIBUTION

(Department of Consumer Affairs)

BUREAU OF INDIAN STANDARDS

New Delhi, the 23rd July, 2007.

S. O. 2131—In pursuance of sub-regulation (6) of regulation 5 of the Bureau of Indian Standards (Certification) Regulation; 1988, the Bureau of Indian Standards, hereby notifies that the licence (x) particulars of which is/are given below has/have been Cancelled with effect from the date indicated:

SCHEDULE

Sl.No.	Littence No (CM/L) June, 2007	Name and Address of the Licensen	Article/Process with relevant indian Standards covered by the licence cancelled	Date of Cancellation
ōi. —	8719493	M/s. P. R. Rolling Mills (Pvt.) Limited Plot No. 8-707, Road No6, Vishwakarma Industrial Area Jaipur-302 013 (Rajusthan)	IS 8500: 1991 Structural Steel	21-06-2007
02.	8793711	M/s. Shree Agarsen Industries E-293 (A), Road No. 14 Vishwakarma Industrial Area, Jaipur-302 013 (Rajasthan)	IS 398 (Part 2): 1996 ACSR	8-6-2007

[No. CMD/13:13].

A. K. TALWAR, Dy. Director General (Marks)

नई दिल्ली, 23 जुलाई, 2007

का.आ. 2132.—भारतीय मानक ब्यूरी (प्रमाणन) विनियम, 1988 के नियम 4 के उप-नियम 5 के अनुसरण में भारतीय मानक ब्यूरी एतरद्वारा अधिसुचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्वीकृत कर दिए गए हैं :-

अनुसूची

क्रम सं.	लाइसेंस संख्याः	 स्वीकृत करने की तिथि∕वर्ग/मह	लाइसेन्सधारी का नाम व पता	म्हरतीय भानक का सोर्धक	 मा मा संख्या	 भाग	अनुभाग	वर्ष
1	2	3	4	5	6	7	8	٠.
1.	T:45 89 3	29-05-2007	कोठम्स इंडस्ट्रीज (मृतिरः 2), प्लॉट नं. 123, 124 और 125, चंद्रमौली को-आपरेटिव इस्टेट सिपिटेड, पोहोल जिला-सोलागुर-413212	सोक्षेत्र के लिए उत्स भनत्त्र के पॉलिक्सिन पहण्स	14333			1996
2	7747190	01 -06 -2007	धनलक्ष्मी री-सेलिंग मिल्स, डी-57, स्टीशनल, एमआईटीसी, जालना-431203	कांकीट री-इन्फोर्समेंट के लिए उच्च शक्ति की डीफार्मड स्टील की तारें न छड़ें	1786			1985
3.	77470 89	01-06-2007	सुकनराज एस. घरमार, 624, गणेश पेठ, गोविंद हलकाई चौक, पुषे-411002,	स्वर्ण और रक्षणं मित्रवातु आपूरण/कृत्रिम-शिल्पकृति और चिन्हांकन	l4ŧ7			1 999
4.	77 3 73 8 9	06 06-2007	किशोर अकृता फूड्स, शैठ नं. 81/एर्बा, लोनाकला इंडस्ट्रीयल इस्टेट, नांगरगांव, लोनाकला, चालुका-मावल, जिला- गुणे-410401	पैके जर्म ः पंयजल (पैकेजबीद प्राकृतिक मिनरल जल के अलावा)	14543			2004
5.	77483 94	06-06-2007	चुनीलाल लथाजी एंड संस, 546, सॅटर स्ट्रीट, कौराल पैलेख केंप, पुणे-411 00 1	स्वर्ण और स्वर्ण धिश्रधातु आपूरण/कृत्रिम-शिल्पकृति और चिन्हांकर	1417			1999
6.	7748903	01-06-2007	नाबाली इंडस्ट्रीज, नट संख्या ५५, सम्बनसाही, कोरोची, पालुका-झटकंगले जिलस-कोल्हापुर-416005	पेयनल आपूर्ति के लिए अनप्सास्टिसकृन्ड पीयीसी पाइप्स	4985			2000
7.	774 95 01	07-06-2007	षायोनीर पॉलीमर्स, 139, घंडमौली को आपरेटिय इंडस्ट्रीयल इस्टेट, मोडोल-बिला-सेलापुर-413213	पेयजल आपूर्ति कं लिए उच्च घनत्व के पॉलिशिलीन पाइप्स	4984			1995
R. 	775 379!	19-06-2007	रामकंद्र त्रिक्क देशमुख, 447. चौपाटी कार्रजा, अञ्चयदनगर-4]400!,	स्वर्ण और स्वर्ण भिन्नधानु आपूषण/कृषिय-शिल्पकृति और चिन्हांकन	1417		रीयमञ्जीता र	1999

[सं. मीप्मकी/13 : !!]

ए. के. तलबार, उप महानिदेशक (मुहर)

New Delhi, the 23rd July, 2007

S. Q. 2132 .—In pursuance of Sub-regulation (5) of Regulation 4 of the Bureau of Indian Standards (Certification) Regulations. (1986, o) the Bureau of Indian Standards, hereby notibes the grant of licences particulars of which are given in the following schedule:

SI.	Licence	Gram Date	Name & Address of the	Title of the Standard	15 No.	Part	Section	Vest
oi. No.	No.	Ottom Date	Party	The Ortiz manage	1.7.140.	1411		
!	2	3	4	5	6	7	8	9
·· <u> </u>	77458193	29-5-2007	Kothari Industries (Unit-II) Plot No. 123, 124 & 125. Chandramauli Co-ep ladi. Estate Lid., Moneil, District Solapur-413212	High density Prity, thylene pipes for sewerage	14335			1996
2	7747190	1-6-2007	Dhenlayını Re Rolling Mil's.	High strength	1786			They
		•	D-57, Add/ MIDC:	deformed steel burs				
			Jahna 431/203	and wires for				
				concrete				
				reinforcement				
	2047089	1.6.2007	Sukannaj S. Parmon.	Gold and gold alloys.	141-			1999
			624, Ganesh Peth.	Jewellery/artefacts.				
			Govind Halwai Chowk.	Tineness and marking				
			Proc. 41 i002					
-	. 7737389	67-207	Kishor Aqua Foods.	Packaged drinking wat	er	14543		20001
			Shed No. 81/AB.	(Other than packaged)				
			Longivia Industral Esainte.	natural mineral water)				
			Nangargaon, Lonavala.					
			Tatuka-Maval.					
			District-Pane-450401					
	7748394	6-6-31XI7	Chunilal Ladhaji & Sons.	Gold and gold alloys.	1417			198
			546. Centre Siseet	gowerbery furneracts- Frineness and marking				
			Kushai Patice. Camp, Punc 43040	T the second and salar kusp				
	5. 57489 B	16.500	li daji halistras.	Unplasticazed PAC Pip		P865		121
	. //4/2/3		Gat No. 99,	for Potable Water Sup		,		
			Chawanwadi, Korochs,	Tel extracte states and				
			Taluka-Hajkanangale.					
			District-Kolhapur 416005					
-	7 7749501	746-3807	Proteer Polymers.	High density polyethy	lene	4984		198
			139. Chandramaeh Co-Op	pipes for potable water	г			
			Indl listate, Mohol.	supplies				
			District-Solapur-40/213					
	175,779)	[946- 218 6	Ramchandra Frimbak	Gold and gold alloys	1417			198
			Deshmukh, 447, Chowpan	gewellery/arthurs				
			Karangs, Ahmednagar-41-000	Hiperiess and marking				

[No. CMB#15141]

नई दिल्ली, 23 जुलाई, 2007

का,आ. 2133.-- मस्तंय मानक ब्युरो (प्रमाणन) विनियम, 1988 के नियम (4) के उप−ियम (5) के अनुसरण में भारतीय मानक ब्युरो एत∉हरू अधिसूचित करता है कि जिन लाइसेन्सों के विवरण नीचे अनुसूची में दिए यए हैं, वे स्वीकृत कर दिये गए हैं :

अनुसूची

——————————————————————————————————————				
क्रम सं	ल ः इसँग्र स्र	चस्तृ तिथि	स्ताइसॅमघारी का नाप व पता	परतीय मानक का शीर्यक व संबंधित भारतीय मानक
i	2	3	4	5
	जून 2007			
!.	MACHINAN E	05-06-2007	मैसर्म श्री गम केवल्स प्रा. लि.,	694 : 1990
			ए 524. रीको औद्योगिक क्षेत्र, चौपाँको, भिवाडी-301 019. रिडला-अलवर (राजस्थान)	पीबीसी इन्सुलेटेड केबल्स
:	8831487	12-05-2007	मैसर्स भी ज्याम कृषा इलैक्ट्रिक प्रश्तिः,	7098 (भाग ।) : 1988
			स्च १४४४, फेज ५. सीतापुरा आधानिक क्षेत्र, जयपुर (राजस्थान)	एक्सएलपोई इन्सुलटेड पौबोर्सा केवल्स
١.	5831:A)2	32-04-2007	मैसर्व धिवाडी थिलिण्डर्श हो। लि.,	3196 (भाग 2) : 1992
•	1-7174	.2-04-2507	द-१२५, १२०० एवं १२०१, औ. क्षेत्र,	सिलिण्डर्स फॉर स्थिक्षेफायकरन
			भिवादी-१०१ (1%)	गैमंज अहर देन
			जिस्तः आसवर । सहस्थान)	एसपीजी
•	k831689	(1-06-2007	मेमर्च आदिनाध एविंग कन्त्रोल कंक्स्स प्रा. स्ति., एफ-67) . रोको आद्योगिक क्षेत्र, सीतापुरः, जयपुर (गजस्थान)	२०५८ (घनग १) : 19४६ स्वयास्त्रपदि इन्युसंटेड पीवीसी कंबल्य
	8831790	11-06-2007	पैसर्स आदिनाय पॉवर फण्डील कं म ल्स प्रथा लि.,	1554 (MPLL) : 1988
			एफ-67) . रीको औद्योगिक क्षेत्र,	पीवीमी इन्स्लेटेड (एवडी)
			सीतापुरः, वयपुरः (राजस्थान)	कंबल्स
6	8832792	13 06 2007	मैसर्स नीमकण्ठ वैरूड प्रा. सि.,	447 : 1988
			बी-947, रोको औद्योगिक क्षेत्र,	रबद्ध होज फॉर बैल्डिंग
			फेज ३, मिवाडी,	
			बिला-अलवर (राजस्थान)	
٦.	8827597	29-05-2007	पैसर्स आम इन्टरनेशनल,	14543 : 2004
			एफ-31, रीको औद्योगिक क्षेत्र.	बातलबन्द पाने ऋ। पानी
			गेगल, अजमेर-305 0 01 (राजस्थान)	
٧.	8827496	29-05- 200 7	मैसर्स एडवान्स माइका फर्टीलाईकर्स प्रा. लि.,	8960 : 197X
			ई-39, रीको औद्योगिक क्षेत्र,	मिवाइंल पेरायियान डोपो
			बगल (विस्तार), बगरू,	
			जिला-जबुपर (राजस्थान)	
9.	8828906	04-06-2007	मैसर्ल ही व्यथमान पॉवर प्रा. लि.,	7098 (पाग ।) : 1988
			भी 849, रोड नं. 14,	एकसएलपीई इन्सुलटेड पोबीसी
			विश्वकर्षा औद्योगिक छंत्र,	क्रमल्म
			जयपुर-302 013 (राजस्थान)	
!ü.	8831588	12-06-2007	मैसर्म पारुश्त पोलीमर्स,	4984 : 1995
			एक-४ एवं ५, औद्योगिक क्षेत्र,	एचडोपीरं पारप्स
			मधानिया, जाधपुर-342 005	
			(राजस्थान)	

	. 2	. 3		
٠.	88301K2	(17-06-2007	मैसर्स राजस्थान ट्रांसफोर्मर्स एण्ड स्विचागियर. (आरटीएस पॉनर कार्या. लि. की इकाई), सी-174. रोड नं. 9(जे), विश्वकर्मा लीद्योगिक क्षेत्र, जयपुर 302 013 (राजस्थान)	1554 (भाग) : : 9XX गोर्बरम् इन्सुलेटेड (एचडी) कंडरल
2.	3830 38 4	0 7-06-20 0 7	मैससे राजस्थान ट्रॉसफॉर्म्स एवड स्त्रियणियर. (आरटीएस पॉकर कार्यों, किं. की इकाई), मी-174, रोड नं. ५(वी), विश्वकमां औद्योगिक क्षेत्र, ज रप् र-302 013 (राजम्बान)	7098 (भाग 1) : 1988 श्व्यवृत्यपोई इन्सुलेटेड पोवीसी केवल्य
- 3.	8832388	r1 06: 2907	मैसर्स खोवाल सबमाँसवल बेलार पम्पस, 22, शमां कॉलोनी विम्तार. 22 गोदाम, जयपुर (राजस्थान)	8684 : 2002 सन्परिचल अय गेर
)±.	8829 6 05	05-06-2007	र्षसर्ग राजस्थान इंजीनियसं एष्ट कॉन्ट्रेक्टसं एण्टरपाईनेज, एफ-45, और्त्रायिक क्षत्र, संकर (राजस्थान)	४५%1 : 1995 एचडीमीई पाडफ्स
! 5.	k829504	05-06-2007	मैसमं राज लक्ष्यां पोलीपसं, १९५०:107, वण्डोर औरवोगिक क्षेत्र, जोधपुर ३४२:304 (ग्रजस्थान)	14151 (भाग 2) : 1999 क्यूमीगीई फड्स्म
.K	8835188	14-06-2 00 7	मैसमे ब्लंड (डॉग्स्या), एक ५४९, सेंड नं. (५ विश्वकर्मा आंद्योगिक क्षेत्र, जयगुर-302 (॥३ (गजस्थल)	2064 : 1995 एनडीपीई प्राइम्स
:"	8833 087	14-06-2007	मैसर्स प्रेम इण्डरद्वीज. ई-354, रोड न 54 ज. विश्वकर्मा औद्योगिके क्षेत्र, जयपुर-307 013 (राजस्थान)	%)२: . 2002 मयसमिवल प्रमार्सट
i, k	<x34089</x34	P\$ 96 2007	्षेत्रस्य हो, सी, क्षण्यम् एव 1 374, सीतापुरः आँद्योगिक क्षेत्र, जयपुर (राजस्थान)	694 : (१९५५) कीचोसी इन्सुलंडेल क्रीबल्स
(6.	8834190	18-66 - 2007	मैसर्स विजय कंबल्स एच- ३७३, सीतापुर। आँद्योगिक क्षेत्र, जयपुर (राजस्थान)	694 : 1990 पोवीसी इन्छ्लंडेड कंबलस
20	8834594	19-04-2007	मैससे सुनील ज्वैलर्स, 10, गंगा माता की गली, गंगाल की का गम्बा, जयपुर 302 003 (शजस्थान)	1417 : 1999 स्वर्गाभुषणे की हालपाकित
21.	883 46 95	19-06-2007	संसर्भ आराम क्लास्टिन्स ११. लि , जी-232, टींक रोट , मीतपुरा अध्योगिक क्षेत्र, जयपुर-302 032 (राजस्थान)	13487 : 1992 इंगण्यान इक्खिम्मेट एमीटर
22.	8835701	21-06-2007	मैससं नांगलवाला इध्येक्स (प्रा.) लि एफ-132 एम.आई.ए अलब्दर- 301 030 (गजस्थात)	9988 (भाग 2 । : 2003 इसास्टोनर इन्सुलेटेड कंबल्स

1	2	3	4	5
13.	6835802	21-06-2007	मैसर्स पाईन लैमोनेट्स प्रधः लि., ए-526 ए, रीको औद्योगिक क्षेत्र, चौपांकी, भिवाही, जिला अलवर (राजस्थान)	4990 : 1993 कांक्रीट शटरिंग प्लाईबुड
24	8836093	21-06-2007	मैसर्स नवरतन पाईप एष्ड प्रोफाईल लि. एसपी–6, रीको औद्योगिक क्षेत्र, खुराखेडा, जिला अलवर (राजस्थान)	4270 : 2001 स्टील ट्यूब्स फॉर स्ट्रक् य रल परपज
25.	R83078R	08-06-2007	प्रैसर्स बैंकटेश इरीगेशन सिस्टमस प्रा. लि., जी−1-28, एचएमटी रोको औद्योगिक क्षेत्र, ब्यावर रोड, उरवमेर- 305 (क्ष) (राजस्थान)	13487 : 1992 इरीगेशन इक्क्षिपभेट- एमीटर
Zři.	6826902	29-05-2007	मैसर्स केशव इसैक्ट्रिकस्थ (प्रा.) लि., जी 1-63, रीको औद्योगिक क्षेत्र, कालाढेरा, जयपुर (राजस्थान)	14255 : 1995 एरियल कन्य ः कंग ल्स
27.	8626801	30 05 2007	मैसर्स जे. के. काइट सीमेंट क्कर्स पो. ऑ. मोटन-३४२ ९०२ जिला नागौर (राजस्थान)	8112 : 1989 43 ग्रेड ओपीसी
28.	8527193	29-05- 200 7	मैसमं सारूण्डा लैम्प्स धा. लि., बोकानेर सेड, बीकासर, नोखा जिला-बीकानेर (सवस्थान)	418 : 2004 जीएलएस लैप्प्स
29.	8827092	30-05-2007	मैसर्स जे. के. सीमेंट क्वर्स, पी. ऑ. गॉटन-342 902 जिला नागौर (राजस्थान)	1489 (भाग I) : 1991 पोर्टलैंग्ड पोबोलाना सीमेन्ट

[सं. सीएमडी/13 : 11]

ए, को तलवार, उप महानिदेशक (भूटर)

New Delhi, the 23rd July, 2007

S. O. 2133.—In pursuance of sub-regulation (5) of regulation 4 of the Bureau of Indian Standards (Certification) Regulation, 1988, the Bureau of Indian Standards, hereby notifies the grant of ficence particulars of which are given in the following Schedules:—

SCHEDLLE

S l. N o.	Licence No. (CM/L-)	Operative Date	Name and address of the Licensee	Article/Process covered by the licences and the relevant IS: Designation
1	2	3	-4	5
	June 2007		•	
ถเ	\$830 0 81	05-06-2007	M/s. Sri Ram Cables Pvt. Ltd. A-524, RHCO Indestrial Area Chopenki, Bhiwadi Distt. Alwar-301019 Rajasthan	694:1990 PVC Insulated Cables

	2	3	4	5
2	8831487	12-6-2007	M/s. Soree Shyam Kripa Electric Pvr. Ltd. 11-1040, Phase-Uf Satapura Industrial Area, Jaipur Rajasihan	7058(Part 1):1988 XUPF Insulated PVC Cables
3	x 8 31992	12-6-2007	M/s. Bh:wad: Cylinders Pv: Ltd. E-925, 1200 & 1203 Industrial Area Bhiwadi-301019 Distr. Alwar Rajasthur.	3196(Part 2): 1992 Cylinders for Liquefiable Gases other than LPG
ŀ	8831689	11-6-2007	M/s. Adinath Power Control Cables (P) Ltd., F-671, RRCO Industrial Area Sirapura, Jaipur (Rajasthan)	7098 (Part I): 1988 XI, PE Insulated PVC Cables
š	8 \$ \$1790	11-6-2007	M/k. Adinath Power Control Cables (P) Ltd., 1-671, RIFCO Industrial Area Sitapura, Jaipur (Rajasthan)	1354 (Part I): 1988 PVV lasulated (HD) Cables
5	8832792	13-6-2007	M/s. Neetkanth Wold Pvt. Ltd. G-947, RHCO Industrial Area Phase-III, Bhiwad: Distr. Alwat. Rajasthan	447: 1988 Rubber Hose for welding
	88.7597	29-5-2007	M/s. Om International F 31, RUCO Industrial Area Gegal, Ajmer—305 001 Rajasthan	.4543 2004 Packaged Drinking Wat
t	8 8 274 96	29-5-2007	M/s. Advance Micro Feralizers Pvt. Ltd., F-39, RIICO Industrial Area Bagnu [Extension], Bagnu Distr. Jaipur, Rajastban	896/k1978 Methyl Pararlsion 2/6 Di
,	N878906	÷-6-2007	M/s. Shree Vaudhrigh Power Pot Ltd., G 849, Road No. 14 V.K.J. Area, Jaipur-392013 Rajasthan	7098(Ptgt 15:1988 XIJPE Insulated PVC Cables
:	7471794	12-6-2007	M/s. Maruti Polymers F-8&9. Industrial Area Mathania. Jodhpur-342005 Rajasthan	4084:1995 HDPE Pipes
	A\$C0182	7-45-2007	M/s. Rajzsthan Transformers & Switchgear (A unit of RTS Power Corporation Ltd.), C-174, Road No. 9(J) V.K.I. Area, Jaipur-302013 Rajasthan	1554(Part 1): 1988 PVC hisalaged (HD) Cables

—	2	3	4	5
2	88390384	7-6-2007	M/s, Rajasthan Transformers & Switchgear (A Unit of RTS Power Corporation Ltd., C-174, Road No. 9(1) V.K.1. Area, Jaipan-302013 Rajasthan.	7098 (Part1):1988 XLPE Insulated PVC Cables
13.	8832398	11-6-2007	M/s. Khowal Submersible Valour Pumps, 22, Sharma Colony Ext., 22, Godam, Jaiper, (Rajasthan).	8034:2002 Submersible Pumpsets
14.	F.\$29405	5-6-2007	M/s. Rajasthan Engineers & Contractors Enterprises, F-45, Industrial Area Sikar (Rajasthan).	4984:1905 JIDPE Pipes
15.	#829504	5-6-2007	M/s. Raj Laxmi Polymers F-107, Mandor Industrial Area, Joshpur-342304 (Rajasthan).	14151 (Part 2):1999 QCPE Pipes
!6.	8833188	14-6-2007	M/s. Blade (India) F-943, Road No. 14, V.K.I. Area, Jaipur-302013, Rajasthan.	4984:1995 HTDPE Pipes
17	8833 0 87	14-6-2007	M/s. Prem Industries E-354, Road No. 14-J. V.K.I. Area, Jaipur-302013, Rajasthan.	8034:20(f2 Submersible Pumpsets
.8.	8834089	18-6-2007	M/s. G.C. Cables HI-374, Sijapura Industrial Acca. Jaipur, Rajasthan.	694-1990 PVC Insulated Cables
:9	3834190	18-6-2007	M/s. Vijay Cables H-373, Sitapura Industrial Area. Jaipor, Rajasthan.	694:1990 PVC Insolated Cables
2 0	8834 9 54	19-6-2007	M/s. Sunil Jewellers 10, Canga Mata Ki Cali, Gopal ji ka Rasta, Jaipur-302003 Rajasthan.	1417:1999 Hallmarking of Gold Jewellery
21.	\$81 469 5	19-6-2007	M/s. Aaram Plastics Private Limited G-232, Tonk Road, Sitapura, Industrial Arca. Juipur-302022 Rajusthan.	13484 : 1992 Irrigation Equipment Finitiers
22	8835701	21-6-2007	M/s. Nangalwala Impex (P) Ltd., I/ 152, M.I.A. Alwar-301090 Rajasthan.	9968 (Part 2):2002 Flastomer Insulated Cable

				- 1
1	2	3	4	5
23.	8335802	21-6-2007	M/s Pine Laminates Pvt. Ltd	4990:1993
	·		A-526 A, RIJCO Industrial Area.	Concrete Shuttering
			Chopanki, Bhiwadi,	Plywood
			Distr. Alwar, Rajasthan.	
24.	8336093	21-6-2007	M/s. Navratan Pipe & Profile	4270:2001
			Limited SP-6, RHICO Industrial Area.	Steel Tubes for Structural
			Khushkhera Alwar, Rajasthan.	Purposes
25	950768	8-6-2007	M/s. Vanktesh Irrigation Systems	13487.1992
			Pvt. Ltd., G-1-28, HMT RIICO Indl.	Irrigation Equipment
			Area Beawar Road, Ajmer-305001	Exhitters
			Rajasthan.	
26.	8826902	29 5-2007	M/s. Kehsav Electricals (P) Ltd.,	14255:1995
			GI-63, RIICO Industrial Area.	Aerial Bunched Cables
			Kaladera, Jaipur, Rajasthan.	
27.	8826801	30-5- 2007	M/s. J.K. White Cement Works	8) 12:1989
			P.O. Gotan-342902	43 Grace OPC
			Distt. Nagaur, Rajasthan.	
28	8627193	29-5-2007	M/s. Sarunda Lamps Private Limited,	408,2004
			Bikaner Road, Bikasar,	GLS1.amps
		•	Nokha Distt. Bikanea, Rajasthan	
290	8827092	30-5-2007	M/s, J K, Cement Works	1489 (Part I):1991
			P.O. Golan,	Portland Pozzniana Cement
			Disit, Nagaar, 342902	
			Rajasthan.	

 $[N_0,CMD/13,11]$

A. K. TALWAR, Dy. Director General (Marks)

नई दिल्ली, 24 जुलाई, 2007

का.आ. 2134 :-भारतीय मानक ब्यूरी नियम, 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय माणक ब्यूरी एतद्दार अधिसूचित करता है कि नीचे अनुसूची में दिए गए पा⊇क (को) में संशोधन किया गया/किये गये हैं:-

अनुमूची

क्रभ संख्या	मंशोधित भारतीय मानक(कों) की संख्या वर्षे और श्रीर्धक	संशोधन की संख्या और तिथि	संशोधन लागू होने की तिथि
	2	3	4
	आईएस 10918:1984 की संशोधन संख्या ।	। जुलाई, 2007	31 जुलाई, 2007

इक्ष भारतीय संशोधन को प्रतियाँ भारतीय मानक ज्यूरो, मानक भवन, 9 बहादूर शाह जफर मार्ग, 4ई दिल्ली 110m12, क्षेत्रीय कार्यालयाँ उई दिल्ली, अंशिकाता, घण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों अहमदाबाद, बंगलाँर, भोपाल, भूवनेश्वर, कार्यम्बदूर, गुकाहाटी, हैदराबाद, उथपुर, कानपुर, पटना, पूर्ण तथा तिसवकतापुरम में बिक्की हेतु उपलब्ध हैं ।

[संदर्भ : ईरी !!/दी-35]

पी. को पुखर्जी, वैक्लिक एक एवं प्रमुख (**विद्युत तकनी**की)

New Delbi, the 24th July, 2007.

S. O. 2134.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that amendment to the Indian Standards, particulars of which are given in the Schedule hereto annexed has been issued:

SCHEDULE

SI.No.	No. and Year of the Indian Standards	No. and Year of the Amendment	Date from which the Amendment shall have effect
(f)	(2)	(3)	(4)
I	IS 10918: 1984, Specification is verated type nickel cadmium batteries	or 1, July 2007	31st July, 2007

Copy of this Amendment is available with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zular Marg, New Delhi-110XX2 and Regional Offices: New Delhi, Kolkuta, Chandigarh, Chemai, Mumbai and also Branch Offices: Ahmedahad, Bangalore, Bhopal, Bhubaneshwar, Colimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna Pune, Thiruvananthapuram.

[Ref.: ET 11/1-35]

P. K. MUKHERJFF, Sc. F & Head (Electrotechnical)

नई दिल्ली, 27 जुलाई, 2007

का.आ. 2135.—भारतीय मानक च्यूरो (प्रमाणन) विनियम, 1988 के विनियम 4 के उप-विनियम (5) के अनुसरण में भारतीय मानक च्यूरो एतरद्वारा अधिसुचित करता है कि जिनके विवरण जीचे अनुसूची में दिये गये हैं को लाइसेंस प्रदान किए गए हैं :-

अनुसूर्धाः

 क्रम सं	लाइसेंम संख्या	बैद्यता तिथि	पार्टी का नाम एवं पता (कारखाना)	उत्पाद	आह् एस सं/भाग/खण्ड
~~	444				तर्ष
Į.	2	3		5	6
;	274919 4	5-6-2008	जे एन इंडस्ट्रीन, 16/डी अनवर इंडस्ट्रियल वेशफेअर असोसिएशन, मुकादम कांगडंड को पास, फिल्म सिटी रोड, गोकुलधाम, मालाड (पूर्व), मुंबई-400097	पीनोसी रोधित (हैनोडयूटी) विद्युत कोवल भाग 1 1100 वोल्ट तक कार्वकारी वोल्टता के लिए]554 : भाग । : 1988
2	7750280	4-6-2008	विकास केवस्स, शर्वे सं. 112/2ए, एस्सार पेट्रोल पंप के पीछे, कल्याण मुखाड रोड, कांबगुँव, कल्याण, जिला धाने-421301	पोबोसी रोषित (हैवीडयूटी) विद्युत कंबल भाग 1 1100 वोल्ट तक कार्यकारी वोल्टता के लिए	1554 : माग-1: 1988
3	77.539 93	21-6-2008	टेक्नोफ्लेक्स कोबल्स, इं/।, क्षिणटे कंपाउंड, कोकत्तीपाटा, दहिसर (पूर्व), मुबई ४(१)068	पीवीसी रोधित (हैनोड्सूटी) किशुत केंगल भाग 1 1100 वोल्ट तक कार्यकारी वोल्टता के लिए	[554 : मान 1 : 1988

1 2	3	4	5	6
4 7756078	10-6-2008	लोटस जामसं और कंबल्स. 41/3, सिल्बर इंडस्ट्रियल इस्टंट के पीछे, पातिलया गेड, भिमणंर, प्लॉट सं. 1, नानी दमण, दमण और दीव 396 210	ए स्त्रो स्थैनिक द्रोशकामंत्र चालित बाट भंडे एवं ए आर- घंट मोटर, वर्ग 0.2 एस तथा 0.5 एस	14697 : 1999
5 77542R8	25- 6- 2008	कल्की इंडस्ट्रिज, कल्की इस्टेट, इंश्वरमाई पटेल रोड, गंडरेगीब (पश्चिम), मुं बई १०४४:63	सिलिंग सेन्डि	271: 1 999
6 7756090	27-6-2008	एस अर इडस्ट्रीज संख्या 54, दुसर माला. आदित्य इंडस्ट्रियल इस्टेट, चिंचोली बंदर रोड, मालाड (पश्चिम). सुंबई 400 064	250 बंग्लट तक की रेटित बंग्लटना जाले और 16 एम्प्येयर तक की रेटित करंट वाले प्लग और साजेट निकास	1293: 1988
7 774 949 7	6-6-2008	नविन इंडस्ट्रीज, बैरक सं. 1965 के पीछे, औ. टी सेक्शन, उल्हासनगर, धार्न 421 005	पोनीशी संधित (हैवीडवूटी) विश्वत कंबल भाग । 1100 पोल्ट तक कार्यकारी वोल्टल के लिए	3554 : भागे । : 1988
8 7755 99 7	27 6·2008	एपल इन्सुलेटेड बाबर प्राइवेट लिमिटेड, सर्वे सं-219/2/3, दादरा चेक भौस्ट के पास, दादरा नगर हवेली. दादरा 396 230	निमन्बन माटरों क बाइडिंग तार भाग 4 अलग-अलग तारों की विशिष्टि अनुभाग 3 पालिश्स्टर और पालिशलोलीन मेथित बाइडिंग नार	'8783 : भाग-4 : अनुभाग-3 : 1995
9 7750 38]	4-6-2008	विकास केवल्स सर्वे सं. 112/2, एस्सार पैट्रोल पंप के पीछे, कल्याण मुखाड रोड, कांबर्गीय, कल्याण, बिला थाने-421 301	अनुप्रस्थ जुडें हुए पॉलीइथालीन निद्युततेषी पी वी मी आवरित केवल (भाग 1) 1100 वोल्ट और महित की कार्यकारी बोल्टना के लिए	7098 : भाग । : 1988
10 7749295	5 6-2008	राहुल होम अप्लाएंसेस. फगवाला कपाऊंड. महाराष्ट्र नगर. मांडुए (पश्चिम). मुंबई 400 078	विज्लों के घरंलू खाद्य गिक्स (इवॉपरक और ग्राइंडर) -	4250 ± 1980

[्]सं, केन्द्रीय प्रमाणन विभाग/13 ५ (१)

इ. के. उलत्यर, ३४ महानिदेशक (प्रमाणन)

New Delhi, the 27th July, 2007

S. O. 2135.—In pursuance of sub-regulation (5) of regulation 4 of the Bureau of Indian Standards (Certification) Regulations. 1988, the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given below in the following schedule:

SCHEDULE

SI. No.	Licence No.	Validity Date	Name and Address (factory) of the Party	Product	IS No /Part/Sec Year
1	2	3	4	S	
I	7749194	05-6-2008	J.N. Industries 16/D, Anwar INDL. Welfare Association, NR. Mukadam Comp., Film City Read, Gokuldham, Malad (E), Mumbai-400097	PV() insulated (heavy duty) electric cables; Part I for working voltages upto and including 1100V	1554 : Part I : 1988
.7	7750280	(14-6-2008	Vikas Cables Survey No. 112/2, Behind Essar Petrol Pump, Kalyan Murbad Road, Kambagaon, Kalyan Dist. Thane 421301	PVC insulated (heavy duty) electric cables: Part I for working voltages upto and including \$100V	[554: Part] : 1988
3	7753 99 3	21-6-2008	Technoflax Cables F/1, Shinghte Compound. Koknipada Dahisar (F1). Mumbai-400068	PVC insulated (beavy duty) electric cables: Part I for working voltages upto and including 1100V	1554 : Part I : 1988
4	7750078	10-6-2008	Lotus Wires & Cables 41/3, Behind Silver Indl, Estate, Patalia Road, Bhimpore, Plot No. 1, Nani Daman Daman & Dio-396210	AC Static Transformer Operated Wanthour and Var-hour Meters, Class 0.2 S and 0.5 S	14697 : 1999
5	7754288	25 6 2008	Kalki Industries Kalki Estate, Ishwarbhai Papel Rd, Goregaon (W), Mumbai-400063	Ceiling Roses	371:1999
6	7756090	27- 6-2 008	S.R. Industries No. 54. Second Floor, Aditya Indi Estate. Chiechol Bunder Road Malad (W), Mumbai-400064	Plugs and socket outlets of 250 volts and rated current up to 16 amperes	1293 : 1988
7	7 7 49 49 7	06-6-2008	Navio Industries Behind Bk. No. 1965. O. T. Section, Ulhasnagar Thane-421005	PVC insulated (heavy duty) electric cables: Part I for working voltages upto and including 1100 V	. 1554 : Part 1 : . : 1968

	••	-	٠	٠
4	M		s	1

	2	3	4	5	6	
8 7755997 27-6-2008		55997 27-6-2008 Apple Insulated Wire Pvt. Lta Survey No. 219/2/3, NR Dadra Check Post, Dadra and Nagar Haveti. Dadar-3962230		Winding Wires for Submersible Mojors- Specification-Part 4: Specification for Individual Wires- Section 3: Polyester and polypropylene Insufated Winding Wires	8783 : Part 4 : Sec 3 : 1995	
g	7/50381	46-2008	Vikas Cabies Survey No. 1 i 2/2, behand Essar Petrol Pump. Kalyan-Murbad Road, Kambagaun Kalyan Thane-121001	Crosslinked Polyethylene Insulated PVC sheafhed cables: Part I for working voltage upto and including 1100V	70981. Part 1: 1988	
in	1740295	5 6 2006	Rahul Home Appliances Fuggawala Compound. Maharashtra Nagar. Bhandup (W), Mumbai 400078	Domestic Electric Food-Mixers (Liquidizes així Grinders)	4250 . 1980	

[No. CMD/13:11]

A. K. TALWAR, Dy. Director General (Marks)

नई विस्सी, 10 जुलाई, 2007

का आ, 2136.=भारतीय मानक व्यूरो (प्रमाणन) विनियम, 1988 के विनियम 6 के उप-विनियम (१) के अनुमरण में भारतीय पानक व्यूरो एतर्द्वारा मोर्च अनुसूची में दिये गये उत्पादों की पुतरांकन शुल्क अधिसृधित करता है:--

अनुसूची

- स्टॉच गन्म्स	28-7	ધ નુ.	94	ळपर्	इकाई	-गुनावन युरुक	मुख्यंकर	डम्बर्ड सर	स्लेखाः इक्टईयाः		ज्लोब ≟ में	डकार्ड दर	प्रजनन तिथि
.	_	_				सई पैप्पं गर	्येट पैनाने पर	स्लंबा	•		ऽ≉शयां	र्रोष	
):632	h	0	19 8 6	प्तरको और लेपिया के तेल को स्वलियाँ	। ਣਕ	37590	30500	16/00	2000	8.06	2000	100	19 (8) 2007
1547	0	С	1946	काशिक मलाई रहित मूथ पाउटर) एप टी.	39200	15400	130 00	300	65.00	300	33.90	10 06 2007
2603	C	0	2002	प्रंटीलाकोर पायसनीय साह	100 लिस	43400	36900	22.00	2000	0	э	11.00	19 36 2007
351	U	0	2003	नहर के अब्दार के लिए पराजदा उच्च घनत्व जैलीड्बइस्टेंस (एवडीपीई) की कपड़ा	100 वर्ग मीटर	55600	49300	300	समी	-	-		19 (4) 2007

[मः कंप्रवित्तरतात्

६ कं. तत्तवार, उप महानिदेशक (मृहर)

New Delhi, the 30th July, 2007

S. O. 2136.—In pursuance of sub-regulation (3) of regulation 6 of the Bureau of Indian Standards (Certification) Regulations, 1988, the Bureau of Indian Standards, hereby notifies the marking fee for the products given in the Schedule:

SCHEULE

15 No	Par	t Sec	Уват	Product	Units	Minimum Large Scale	Marking For Small Scale	Units Rate Slab 1	io	Units Rate 51sb-2	io	maining	Effective Date
1937	Ø	0	1986	Mustard & Rape Seed Oil Calle	lToeme	37500	30500	16.00	2000	8.00	2000	4.00	19-06-2007
14542	0	Ü	1662	Partly Sideraco Milk Powder	IM.T.	39200	33400	130.00	300	65.00	300	33.00	19-06-2007
1516U	a	נו	ZUÜZ.	Productor Emulationic Concentrate	100 Limes	43400	36900	22.00	2000	0		11.00	19-06-2007
1535.	0	0	2003	Luminated High Density Polyedrylene (HDPE) Pahrie for Canal Lining	100 Sq. mtş.	5560n	47300	5 00	All	_	_	_	19-06-2007

[No.CMID/13:10]

A. K. TALWAR, Dy. Director General (Marks)

नई दिल्ली, 30 जुलाई, 2007

का.आ. 2137.—पारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के विभिन्नम (5) के उप-विनियम (6) के अनुसरण में भारतीय भानक ब्यूरो एतद्द्वारा अधिसृचित करता है कि निम्न विवरण वाले तहरसेंसों को उनके आगे दर्शायी गई तारीख से रद्द/स्थणित कर दिया गया है :-

क्रम संख्याः	लाइसेंस सं स्वा सीएम/एस—	लाईसँसम्ब री का नाम व	लाइसेंस के <i>जीव</i> नंत वस्तु/प्रक्रम सम्बद्ध चस्त्रीय चनक का त्रोक्त	रह/स्थिंगत करने की तिथि
§	2	पता	सम्बद्ध भारतस्य भारतः का शासक	5
ι.	मी ए म/एल-7471276	जव स्त्रेबियम इंडस्ट्रीज़,	पैकेज धन्द पेय जल (पैकेय बन्द	2007/05/01
		हरिओप स्टेसायटी, कोटारिया रिंग रोड, राजकीट, गुजरात 360004	प्राकृतिक मिनरल बल के अलावा) - विशिष्टि भाषा । 4543 : 2004	
2	सीय्म/प्ल-7591286	ए वन सीमेंट इंडस्ट्रोब, 8-अ तस्ट्रीय राजमार्ग, अमूल राल यिल के सामने, विमबद्दी, मोरबी, जिल्हा राजकोट, गुजरात 363642	43 प्रेष्ठ सहवारण पोर्टलॅंड सहिमेंट पामा 8112 : 1989	2007/06/22
3.	सीएम/एल-0767868	एक्सेल कॉप केबर लि. 6/2 रूवापरी रोड, भावनगर, मुजरात	तकनीकी ग्रेड एन्डोसल्फान की विशिष्टि मामा ४३४४ : 1978	2007/06/13
4 ,	ਜੀएਸ/एल -2224436	सोलर पैकेंजिंग प्रा. लि., श्री अमरसिंहजी मिल्ज कांग्रकंड, स्टेशन रोड्, बांकानेर, जिला : राजकोट, गुजरात 363622	टाइपराइटर के सूनी रिमन की विशिष्टि भामा 4174 : 1977	2007/05/03
Š.	सीएप/एल-7245166	अमर ज्वोत पोली केम प्रा. लि., प्लॉट सं. 2222, लोधिका जी आई डी सी, राधे वे बिज, मेरोडा, तालुका : लोधिका, जिला सजकोट, गुजरत 364458	पेय जल आपृति, मल और और्धोगिक सहिस्तावों हेतु ढच्च घनत्व पॉलीड्चहलीन पाड्प भामा ४९६४ : 1995	2007/05/30

ı	. 2	3	4	5
6.	सींक्ष्मयस्त-7315#68	समाति प्रेसीमस्य, 1/4, समाट इंटस्ट्रीयश इरिया, मैन सैन के समीप, को विकास सम्पन्ध मार्ग, गोंडल रोड़, राजकोट मुक्तन 360004	सिंचई उपस्कर-स्थिकलर पाईप- विशिष्टि भाग । पोलीश्रीसीन पाईप भाग (415) : म्हण : 1999	2007/05/30
7.	सीएम/एल-7318268	असोक होन रूप्तांगीसक प्र. लि., असोक उद्योग भवन-॥, तांठी रोड्, माजदी प्लोट, राजकोट, मुजरात 360004	इषित पैद्रोलियम गैसों के साथ प्रयुक्त मरेल् गैस फूके फक्ष 4246 : 2002	2007/06/20
8.	मीएम/एस-7374278 :	कृष्णा क्तारिटकण, पॉडल रोड्, मनसमा इंडस्ट्रीय, जंपनाय मार्गलय, राजकोट, पुजरत 360004	सिंबई उपस्कर-स्प्रिकलय फाईप- विशिधिट फाग ; पोलीबीलीन पाईप भामा 4 51 : भाग : 1999	2007/06/18
9.	संप्म/प्ल-7414062	प्रमुख सोमेंट प्रा. स्ति., सर्वे सं. 83/1, गाँव अस् रीतं , खतुका कोटटा संघानी, गांवकोट, गुजरात	43 ग्रेड साधारण फोर्टलैंड सीमेंट भागा 8112 : 1999	2007/05/31
iû.	मीएम/एल-7479902	जियस सौ हिर., गाँव नानकचया, तालुका सुंद्र, कच्च 370415	ब्रुंडलिस वेल्डिस पाइपें पामा 5504 : 19 97	2007/06/04
11-	सीएस/ प्ल- 7467285	परकेक्ट बेबरेजीज, 14, विस्त्रमनगर, चित्रा सिद्शर तेड् पानी की टंकी के सामने, भवनगर, मुबदत 364001	पैकंजक्न्द्र पेय जल (पैकंजक्द प्राकृतिक स्थिक्त्ल जल के अलावा) विशिष्टि प्रामा 14543 : 2004	2007/06/27

[संख्या सी **एम डी**-13 : 15]

ए, के. तलबार, उप महानिदेशक (पुहर)

New Delhi, the 30th July, 2007

SiO. 2137.—In pursuance of sub-regulation (6) of the regulation 5 of the Bureau of Indian Standards (Certification) Regulations. 1988, of the Bureau of Indian Standards, hereby notifies that the licences particulars of which are given below have been cancelled/suspended with effect from the date indicated against each:

SIL No.	Lidence No. CNI/L-	Name & Address of the Licensee	Article/Process with Relevant Indian Standards Covered by the Licence	Date of Cancellation: the Licence Cancelled/ Suspension
1	2	3	4	\$
1.	CN/AL-7471276	M/s Jay Khodiyar Industries Hariom Society, Kothariya Ring Road :Rajket-360004, Gujerat 360004	IS 14543 : 2004	2007/05/01
2	CN4/1-7591286	M/s A-One Coment Industries 8-A, National Highway Opp. Amual Pulse Mill, Timbadi, Morbi, Disti : Rajkot Gujarst 363642	18 8112 : 1989	2007/06/22
3.	CNI/L-0767868	M/s Excel Crop Care Ltd., 6/2 Ruvaparl Road, Bhavaagar, Gujarat 364005	IS 4344: 1978	2007/06/13
4,	CNL/L-2224436	M/s Solar Packaging Pvt. Ltd. Shri Amarsinhji Mills Compound, Stailon Road, Wankamer, Distt: Rujkot, Gujarat-363622	IS 4174: 1977	2007/05/03

1	2	3.	4 .	5
S. CIM A	-7245 166	M/s. Amar Jyot Poly Chem. Pvt. Ltd. Plot No. 2222, Lodnika GIDC, Opp. Radhe Wey Bridge at Metoda Tul. Lodnika, Dist: Rajkot, Gujarat-364458	IS 4984 : 1995	2007/05/30
6. C,M/1.	-7315 868	M/s. Khyati Polymers 1/4, Samrat Industrial Area, Neur Ban Lah, Dr. Vürgan Sambhai Marg, Goadal Road, Rajkot, Gujrat 360004	IS 14151: Part 1: 1999	2007/05/30
7. CM1	731 8268	M/s. Ashok Home Appliances Pvt. £4d. Ashok Udyog Bhevan-D, Tunti Road, Mavdi Plot, Rajkot, Gujarat-360004	IS 4246 : 2002	2007/06/20
8. CM/L	737 4278	M/s. Krishna Plastics Gendal Road, Behind Mansatta Industries, Opp. Jagnath Marbles, Rajkot, Gojarat-360004	IS 14151; Part 1 : 1999	2007/06/30
9. CM/L	-741 4062	M/s. Prausikh Cement Pvi. Lad. Survey No. 83/1, Village Artici, Taheka Kotaheangani, Rajkot, Gujarat	IS 8112: 1989	2007/05/31
10. CM/	L-7 479902	M/s. Jipdat Saw Ltd. Villago: Nackaptya, Taluku Mundra, Listt. : Kachebb, Gujunt-170415	IS 5504: 1997	2007/06/04
H. CM/	1 L-74672 8 5	M/s. Perfect Beverages, 14. Vishramagar, Chitra-Sidear Road, Opp. Water Tank, Bhavnagar, Gajunt-364001	IS 14543 : 2004	2011/06/27

No. CMD/13:13

A. K. TALWAR, By Director General (Marks)

. नई दिल्ली, ३० कुलाई, २००७

का.आ. 2139.—बारवीय सम्बद्ध स्तूरी (प्रयापन) चिनियम, 1988 के विनियम 5 के कुछ विविद्धा (६) के अनुसरण में समझैप मानक ब्यूने एक्यूपार अधिस्तिमा करता है कि किसके विवरण मीचे अनुसूची में दिए गए हैं को समझै साने सानी को सामित से स्तू कर दिना गया है :—

arend .

क्रम संख्या	व्यक्त िस संस्था	स्वेंस संस्था मार्डिमश ्चे का चम एवं पता	लक्सेंग की ओली केंग्नु जान सम्बद्ध पार्टीय पानक प्रतिम		रह बारने की निर्दे
1	2	<u></u> ę		· .	
1.	7330662	कवित क्रम संस्कृत क्रम सेमिक्स कंत्रजंड, सम्बद्ध वेड, मीतित (कृषे), संसर्व-४३४४६३	2148 : 1941 विस्तारी मैस प्रवृक्ति विज्ञासी के बुस्क्रस		<u> 39-6-20</u> 07

]	2	3	4	5
3	7026659	खोः को इलेक्ट्रीकरूस गाला सं. १. पहला मरला, मनीय इंडस्ट्रीयल इस्टेट सं. १. म नमर. वसर्ड रोड (पूर्व) जिला मा ने-401210	3854 : 1997 म्हरेलू और श्रमान प्रमोजनों के लिए स्विच	25-06-2007
<u>ڏ</u> .	शर्मा इंडस्ट्रीयल इस्टेट, विस्कोटी गैर		2148 : 1981 विस्कोटी गैस पर्योवरणो के लिए विक्की के उपकरण-ज्जालासर आवरण	27 (% 2007

[सं. केन्द्रीय प्रमाणन विभागः/13 : 13].

ए, कं. तलवार, ८५भड़ानिदेशक (मृहर)

New Delhi, the 30th July, 2007

S.O. 2138.—In pursuance of sub-regulation (6) of Regulation 5 of the Bureau of Indian Standards (Certification) Regulations, 1988, the Bureau of Indian Standards, hereby notifies that the licences particulars of which are given in the following schedule: have been cancelled/with effect from the date indicated against each:

SCHEDULE

SI. No.	Lirence No.	Name and Address of the licensee	Article/Process with zelevant Indian Standards covered by the hoence cancel	Date of Cancellation led
Ł	2	. 3	4	5
1.	7.3 j 00 6 62	Comet Brass Product Nusan Chemical Compound, Wathhat Road, Goregaon (E). Mumbai-400063	2148: 1986 Flamepmof enclosures for electrical apparatus)7 06 200 7
2	70 26659	D. K. Electricals Gala No. 1. First Floor, Manish Indl. Estate No. 3. Navgbar, Vasai Road (East) Distt. Theoc-40 (210)	3854: 1997 Switches for domestic purposes	25-06-2007
3.	7462881	Comet Industries Sharma Industrial Estate, Gaia No. 3, Udhyog Bhavan, Walbhat Road, Goregaon (E), Mumbai 400063	3548 : (98) Plameptoof enclosures for electrical apparatus	27-06-2007

[No.CMD/13:13]

A. K. TALWAR, Dy. Director General (Marks)

श्रम एवं रोज़गार मंत्रासम नई दिल्ली, 9 जुलाई, 2007

का आ. 2139.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार तुंगमद्रा प्रामीण बैंक के प्रवंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बैंगलीर के पंचाट (संदर्भ संक्वा 5/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09-07-2007 को प्राप्त हुआ स्त ।

[सं. एल-12012/258/2002-आईआर(बी-1)] अजय कृपार, बेस्क अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 9th July, 2007

8.O. 2139.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government bereby publishes the Award (Ref. No. 5/2003) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore, as shown in the Amazure in the Industrial Dispute between the management of Tungbhadra Gramin Bank and their workmen, received by the Central Government on 09-07-2007.

[No. J.-12012/258/2002-IR (B-I)] AJAY KUMAR, Desk Officer

ANNEXLRE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated : 26th June, 2007

PRESENT

Shri A. R. Siddiqui, Presiding Officer

C. R. No. 05/2003

1PARTY

B. Mahadevappa, S/o Shri Marricappa, No. MIG 59, KHB Colony, Gandhi Nagar, Bellary, Karnataka State.

II PARTY

The Chairman, Tungabhadra Gramin Bank, (Head Office), Gandhi Nagar, Bellary, Kranataka State

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section (2A) of

the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. L-12012/258/2002-IR(B-I) dated 5th February, 2003 for adjudication on the following schedule:

SCHEDULE

"Whether the action of the management of Tungabhadra Gramin Bank imposing the penalty of punishment of removal from services on Shri B. Mahadevappa is legal and justified? If not, what relief the workman is entitled?"

- 2. A charge sheet dated 17-09-1992, came to be issued against the first party (bereinafter called the workman) by the management on the allegation that be remained unauthorisedly absent from duty from 07-08-1991 to 20-12-1991 and also disobeyed the orders of the management to rejoin duty until 21-12-1991. It was further alleged that he also remained unauthorisedly absent from duty w.e.f. 01-02-1992 to 30-04-1992 and then absented from duty from 13-05-1992 onwards.
- 3. Another charge sheet dains 16-03-1993 was issued against the workman on the allegation that he remained absent from duty without leave being sanctioned from 15-11-1992 to 29-01-1993 and thereby committed misconducts under Regulation 22 of the Tungabhadra Gramin Bank (Staff) Regulations, 1980.
- The workman appears to have given teplies to: both the charge sheets denying the allegations of unauthorised absence and the management not being satisfied with the explanations offered by the workman ordered DE to be conducted in both the charge sheets appointing the enquiry officer with intimation to the workman. He participated in the enquiry proceedings conducted against him on the aforesaid charge sheets separately and on the conclusion of the coquiry proceedings, the enquiry officer submitted his enquiry findings on 20-04-1994 in respect to the first charge sheet. and on 21-5-1994 with regard to the subsequent charge : sheet holding the workman guilty of the charges of misconduct of unauthorised absence as alleged in both the charge sheets. By a common order dated 24-06-1994. the Disciplinary Authority while forwarding the findings of the enquiry officer to the first party proposed the punishment of removal from service by way of show cause notice calling upon him to furnish his representation within a period of 7 days from the receipt of the order with regard to the findings of the enquiry officer and the penalty proposed. The workman submitted his comments and explanation over the findings of guilt recorded by the enquiry officer as well as by the Disciplinary Authority and on the proposed punishment, the disciplinary authority not being satisfied by the explanation submitted by the first party confirmed the proposed punishment by order dated 17-08-1994. His appeal against the aforesaid order came

to be dismissed by the Appellate Authority's order dated 09-12-1994. It appears that thereafter the first party raised the Industrial Dispute before the Conciliation Officer concerned and that resulted into the present reference proceedings.

- 5. Reeping, in view the contentions of the workman in his Claim Statement and the contentions taken by the management in its counter statement with regard to the validity and fairness or otherwise of the enquiry proceedings, a Preliminary Issue was framed on the said point and parties were called upon to lead evidence. The management examined the enquiry officer (common on both the charge sheets) as MW1 and got marked 14 décuments at Ex.M1 to M14. The first party examined hithself by way of rebuttal evidence and after having heard the learnest counsels for the respective parties this tribunal by order dated 20-10-2005 recorded a finding on the above said issue to the effect that the proceedings of enquiry conducted against the first party (workidan) by the Second Party (Management) on the first charge sheet dated 17-9-1992 are not fair and proper and whereas, the proceedings of enquiry held against the first party by the second party on the second. charge sheet were fair and proper. Thereupon case came to be posted for evidence of the management to prove the charges of misconduct levelled against the workman on the second charge sheet dated 16-03-1993. The management to substantiate the charges examined one witness as MW2 by filing his affidavit evidence and in his further experimetion chief got marked 33 documents. at Ex. M15 to M47, (which documents were already marked at MEx.1 to 33 during the course of enquiry). Once again, the first party examined himself by filing his afficavit evidence on merits of the case as far as the second charge sheet is concerned.
- The case of the first party workman as made. out in the Claim Statement on merits with respect to both the charge sheets, to put in outshell is that the alleged unauthorised absence from duty referred into the aforesaid two charge sheets against him was due to the reason of sickness and he had submitted his leave applications and medical certificates, whenever, he remained abject from duty. By way of replies to the charge sheets he already has submitted that he suffered from mental disturbance and had to undergo the said. problem during the aforesaid absence period. He also made it clear that he was taking treatment from 'native' medical practitioners and therefore, on certain occasions he could not furnish the medical certificates. As far as the findings of the enquiry officer on the 2nd charge. spect holding him guilty of the charges, he contended that there was absolutely no evidence to justify the finding of the guilt recorded against him as the management did not lead any legal evidence to establish the charges of misconduct. On the other hand he

- examined himself to depose to the fact that he was suffering from illness supported by the evidence of his mother examined during the course of enquiry. He contended that the findings of the enquiry officer are based on 'no evidence' and contrary to the evidence on record suffering from perversity. He also challenged the action of the Disciplinary Authority in clubbing both the charge sheets and then passing the impugned punishment order on the ground that it suffered from violation of principles of natural justice. He challenged the order passed by the Appellate Authority, as well, contending that it failed to apply its mind to the requirements of Regulation 31. Lastly, he contended than the impugned punishment order in removing him from service is grossly disproportionate and shocking and therefore, he requested this tribunal to allow his reference. by passing an award sening aside the impugned punishment order passed against him with relief of reinstatement and all other consequential benefits.
- The management by its counter statement while. repeating the charges of misconduct levelled against the first party in both the charge sheets contended that after conducting the DE against the first party giving him fair and reasonable opportunity to participate in the proceedings, the enquiry officer having considered the oral and documentary evidence produced before him rightly, came. to the conclusion that charges of misconduct against the first party have been proved and be has rightly been imposed. with the punishment of removal from service keeping in view the gravity of the misconduct committed by him. The management contended that the charges of misconduct of unauthorised absence levelled against the first parry hadnever been denied by him during the course of enquiry except. his self conflicting defence that some times he has submitted. the medical certificates and some times contending that he look treatment from native Doctors being unable to obtain any medical certificate for the period of his absence from duty as mentioned in the charge sheets. The management also took up the contention that the reference on hand itself. deserves to be rejected on account of abnormal delay in raising the dispute before the concerned authorities as he was removed from service by order dated 17-08-1994, his appeal was dismissed by order dated 09-12-1994 and whereas he approached the conciliation officer by raising the dispute On 11-03-2002 i.e. after a period of 8 years that too without. offering any satisfactory explanation for the delay caused in raising the dispute. Therefore, the management requested this tribunal to reject the reference.
- 8. Now keeping in view the finding recorded by this tribunal on the first charge sheet dated 17-09-1992 holding that the DE held on the said charge sheet was not fair and proper, let us in the first instance find out as to whether the charges of misconduct of unauthorised absence levelled in the said charge sheet have been substantiated by the management by leading evidence on merits before this tribunal.

9. MW2, who happened to be the Branch Manager during the period the first party remained absent from duty as alleged in the charge sheet has filed his affidavit before this tribunal giving out the details of the charge sheet with reference to the aforesaid documents at Ex. M 15 to M47. His statement at Paras 2 to 4 in the affidavit running as under:—

"The first party while he was working at Somasamodra branch of the second party bank by submitting an application dated 08-08-1991 absented himself from work from 07-08-1991 and sought leave on medical grounds for the period 07-08-1991 to 14-08-1991 without submitting the Medical certificate. He did not report for work on 16-08-1991 and continued to remain absent unauthorisdedly. His absence was reported by the branch to the head office and the head office of the second party bank sent letters to first party calling upon him to report for work and to explain. the reasons for his unsuthorised absence. The tetters addressed to first party bearing. No. STF PW OLS 3085 91-92 dated 24-09-1991, STF PWOLS 3426 91-92 dated 11-10-1991, STF PW OLS 3796 91-92 dated 13-11-1991 is produced horewith and marked. The first party had received the letters dated 24-09-1991 and 11-10-1991 and the postal acknowledgement received therefore is produced. as exhibits. The letter dated 15-11-1991 was retuned undelivered. Despite the above letters the first party neither replied letters nor reported for work till 21-12-1991 and also did not produce any medical certificate as required under the roles of the second party bank in support of his absence even at the time of resorting for work. The first party also did not submit any explanation for his unauthorised absence even after reporting for work and therefore the unauthorised absence of first party for 136 days was treated as leave without pay by second party bank vide payoccolings of the Chairman no. STF TGB GEN CE 1394 91-92 dated 13-01-1992 with right to initial applications are section. for the same as it constituted a conduct within the provisious of Second Party bank service regulations.

Again first party on 01-02-1992 availed a day's leave and although was required to report for work on 03-02-1992 (02-02-1992 being boliday) he absented from work without any leave being granted and by submitting leave application on 04-02-1992, 07-02-1992 had sought medical leave without submitting any medical certificate as required under the leave rules of the second party bank. The Second party bank had called for his explanation for his unauthorised absence by serving him a letter STF PW OLS 4993 91-92

dated 21-02-1992. The first party acknowledging the said letter sent a letter dated 27-02-1992 with offering any explanation for his anauthorised absence and assured to report for work on 29-02-1992. But he failed to report for work even on 03-03-1992 as required and hence he was again. served with a memo No. STF PW QLS 6566 91-92 dated 30-03-1992 and was directed to report for work and explain the reasons for his unauthorised abence. Despite the said letter first party failed to report for work and he joined duties only on 02-05-1992 by submitting a letter of even date. Not only he did not offer any explanation for his unauthorised absence from 01-02-1992 till 30-04-1992 but also did not submit any medical certificate in support of his absence on medical grounds as claimed by him. Therefore, the unguthorised absence of first party for 90 days was treated as leave without pay by the second party bank vide proceedings of the Chairman No. STF TOB GEN OLS 253 91 - 92 dated 21-05-1992 with right to initiate disciplinary action for the same. as it constituted a misconduct within the provisions. of second party bank service regulations.

Similarly the first party absented from work unauthorised from 13-05-1992 to 10-09-1992 and he failed to offer any explanation for his unauthorised absence despite he was sent letter STF PW OLS 1171 92-93 dated 27-05-1992 and his absence for the said period was treated as leave without by by serving on him proceedings of the Chairmanno STF TGB GEN OLS 1588 92-93 dated 13-01-1993 with right to initiate disciplinary action for the same as it constituted a misconduct within the provisions of second party bank regulations."

During the course of his cross examination by the first party nothing worth was elicited from his mouth so as to shake his testimony on the material particulars of the case as deposed by him in the affidavit. The suggestion made to MW2 that first party was submitting. leave applications for the period of his absence and that he went on leave for his absence period his leave being sanctioned have been denied by the witness. The suggestion that the first purty submitted his medical certificates many times and some times his leave letters. were not accompanied by medical certificates, he being treated from the native doctors was also dealed by MW2. Except the aforesaid suggestions nothing worth was brought out in the cross examination of MW2 to speak to the fact that the absence of the first party during the period mentioned in the charge sheet was an authorized absence and not an unauthorised absence.

11. The first party in his affidavit at Para 3 averred that it is due to his ill health, he could not attend the duty during the period from 07-08-1991 to 14-04-1991 and at that

time he was taking treatment from native Vydhya and that he has submitted leave application for the absence period. He stated this whenever he was absent from duty he availed leave as per the bank Regulations. He stated that his absence from duty was beyond his control and not with any malafide intention. He could not submit the medical certificate being treated by native Vydhya and medicanes. At Para 4 of the affidavit he stated that as he was not keeping wall, he was not in a position to make any correspondence with the bank. At Para 5 he stated that his absence was on account of his illness and he submitted leave applications some times being accompanied by medical certificates. During, the course of his cross examination the admitted that he remained absent from duty from 07 08-1991 to 20-12-1991 by giving reasons in his leave applications that he was suffering from joint pains and stomach ache. He admitted that though he asked for 8 days leave but remained absent continuously for 136 days. He stated that he has given medical certificates and denied the suggestion that he has not furnished any medical certificate déspite several reminders by the management made to him! He admitted that again from 01-02-1992 to 30-04-1992 f.e. continuously for 90 days be remained absent though according to his leave application, he had sought leave for two days only. He admitted that once again from 13-05-1992 (d) 10-09-1992 i.e. for about 123 days he remained absent applying the casual leave only for two days. When he was confronted with his reply to the charge sheet marked. at Ex. M39 be admitted that the reason for his absence given in the said reply were family problems i.e. his sister leaving the house without any trace and bealth problems.

During the course of arguments learned counsel for the management submitted tha the charges of misconduct of mauthorised absence levelled against the first party as levelled in the first charge sheet have nor only been proved by the statement of MW2 and documents but also by way of the very admissions made by the first party in histoross examination. He contended that absolutely normedical certificate for any period of absence was submitted by the workman either while proceeding on leave or at the time of joining the duty at any time, thereafter. He contended that the stand of the workman that he was suffering from ill health thereby not able to attend duty is again self conflicting as in his reply to the charge sheet he has given reasons of his absence from duty other than his ill health. Therefore, learned counsel submitted that the first party not only remained absent from duty unauthorisedly but failed to report duty despite the several letters issued to him to report for duty making it clear to him that the period of absence from duty has been treated as uriauthorised absence. Therefore, thereby he committed the misconduct of remaining unauthorisedly abasent from duty and so also in disobeying the orders of the management to report for duty.

13. Whereas, learned counsel for the first party, submitted that the first party had been submitting his leave.

applications from time to time and could not submit the medical certificates being treated by the native doctors

14. After having gone through the records, I find substance in the arguments advanced for the management. As seen above, MW2, the their Branch Manager, under whom the first party worked during the relevant period, in his affidavit in no uncertain terms has narrated the details of the period of authorized absence from duty by the first party and also has referred to the various documents and letters where under the first party was called upon to give his explanation with regard to his anauthorised absence and also to report for duty immediately.

As noted above the above said statement of MW2 lias not at all been challenged during the course of his cross examination. Not a single suggestion was made to MW2 when he stated that the absence of the first party from duty during the leave period was unauthorised absence and that he failed to report for duty without any explanation for his unauthorised absence despite receiving the letters from the management. The suggestion made to MW2 for the first party to the effect that he always wern on leave after the leave being sanctioned and that he submitted medical certificates some times along with leave applications and some times he could not submit the medical certificates being treated by the native doctors as noted above, has been denied by MW2. Moreover, these are the suggestions made on behalf of the first party without there being any evidence being produced by him suggesting to the fact that his period of absence was always against the sanctioned leave and his leave applications were accompanied by the medical certificates. On the other hand, the cat comes out of the bag when the first party was subjected to cross examination by the management. He, in no uncertain terms admitted in the first instance the fact that though he asked for eight days feave (from U7-08-1991 to 14-8-1991) he remained absent continuously. for 136 days. He further admitted that from 01-02-1992 to 30-04-1992 i.e. for continuous 90 days he remained absent from duty though he applied leave for 2 days only. He then admitted that once again from 13-05-1992 to 10-10-1992 i.e. for about 123 days he remained absent though applied cusual leave for two days only. Therefore, from the above said statement of the first party himself it becomes crystal clear that his absence from duty was not against the sanctioned leave. For the first time he was sanctioned leave just for a period of 8 days but remained absent from duty for a period of 136 days. On the second. occasion he was absent from dury for 90 days though his leave application was only for two days. Similarly, on the 3rd occasion he remained absent from duty for a period of 123 days though his leave application was only for two days. In the face of the above said admissions by the first party it was too much for him how to take a stand in the ernss examination of the MWI suying that his absence was always against the leave sanctioned. Now, coming to

his statement that some times he submitted medical certificates for the treatment be received and some times he could not do so, the treatment being given to him by the native doctors. There was no evidence produced by him to the above effect. Infact at no time his leave application was accompanied by any medical certificate. This fact he admits in his affidavit itself, but denies it during the course of his cross examination before this tribunal. Therefore, there cannot be any hesitation for this tribunal to come to the conclusion that except for the period of 8 days on the first occasion and for 2 days each on the second and third occasions, his absence for the remaining period shown in the charge sheet was unauthorised absence, a misconduct under Regulations 22 of the aforesaid regulation named by the management hank. In the result, it must be held that charges of unauthorised absence as mentioned in the charge sheet compled with the charges leveled against him in not reporting for duty despite the several letters served open him to do so, have been proved by the munagement by sufficient and legal evidence.

Now coming to the 2nd charge sheet dated 16 03-1993. As already noted above, the DE conducted into this charge sheet is held to be fair and proper. In the face of the finding recorded by this tributual, an heavy burden was cast upon the first party to establish before this tributed that findings of the enquiry officer suffered from perversity. On going through the findings of the enquiry officer. I do not find any substance in the arguments advanced for the first party so as to suggest that finding suffered from perversity. Here again the fact that the first party remained absent from duty for the period mentioned in the charge sheet has never been denied by him except taking the contention that it was once again on account of his ill health and that he could not produce the medical certificates being weated by the native doctors. In order to substantiate the charges, the management during the course of enquiry produced the two leave applications dated 31-10-1997, and 16-11-1992 made by the first party and the various letters written by the bank to the first party in keeping him informed that his period of absence has been (reated as unauthorised absence as it was the absence not against the sanctioned leave. The enquiry officer has given his sound and cogent reasonings in coming to the conclusion that the charges of misconduct have been proved against the first beyond any reasonable doubt. I feel it is necessary and worthwhile to bring on record the very reasonings given by the enquiry officer in holding the workman guilty of the charges found on pages 7 to 10 of the enquiry report under the heading "My Observations to above issues" as under :---

MY OBSERVATIONS TO ABOVE ISSUES:

(i) Whether charge sheeted employee has applied for leave from 09-11-1992 to 14-11 1992 and same was sanctioned by head office and at the time of sanction whether charge sheeted

employee was strictly instructed to report back for duty on 16-11-1992. From the exhibit M.F.:) it is clear that the charge sheeted employee had requested six days PL from 09-11-1992 to [4-]1 i992 on account of younger sister marriage fixed on 12th November 1992. As per exhibit ME.8 it is clear that the head office has sanctioned PL from 69-11-1992 to 14-11-1992 under reference OLS 1119, 92-93 dated 05-11-1992 with a strict instructions to report back for duty to 16-11-1992 and it is also mentioned that no more extention. On the other hand defence has not disputed about these documents. Hence, it is established that charge sheeted employee has applied leave from 09-11-1992 to 14-11-1992 and same was sanctioned by head office. Charge sheeted employee was strictly instructed to report back for duty on 16-11-1992.

(2) Whether charge sheeted employee has extended leave upto 19-11-1992 without prior sauction from head office against the said instructions and whether he was expected to join back for duty on 20-11-1992.

From exhibit M.E.2 it can be seen that charge sheeted employee has extended feave upto 19-11-1992 due to unavoidable circumstances. He has stated in the tetter due to some functions in connection with his sister marriage, he is requesting to consider the extension of leave upto 19-11-1992 and this extension of leave upto 19-11-1992 and this extension of leave up to 19-11-1992 without On the other hand defence has not disputed this document hence, charge sheeted employee has extended leave upto 19-11-1992 without prior sanction from Head Office and charge sheeted employee was expected to join back for duty on 20th November, 1992.

(3) Whether charge sheeted employee communed to remain absent without any further information and without sanction from 15-11-1992.

Presenting Officer has relied upon M.E. 3 to M.E. 7. M.E. 3 is the letter written by Somasamudra branch manager to senior Manger. Staff Section, head office Bellary under reference TGS.SD STF 61fO 92-95 VSS 214 dated 21-11-1992 wherein he has stated that charge sheeted employee has so far not resumed duties ME4 is the letter written from Somasamudra branch to General Manager. Staff Section, HO, Bellary under reference TGS.SD 61fO STF 97-92 VSS 230 dated 26-11-1992, wherein he has stated that

Shri B. Maltadevappa not reported for duty. M.E.5 is the letter written, by Somasmudea branch to the Sr. Manager, Staff Section, HO. Builary under reference TGBSD 6HQ-92-93V8S dared B1-12-1992 wherein he has stated that Shri Mahadeyappa has not come to the Baris Since 09-11-1992. As per M.E.6 it is clear that Shri B. Mahadevappa has not report for duty (iii) 30-12 (1992) As per M.E.7, it is clear that Shri B.M. Mahadevappa has remained absent and not come to the branch on the other hand. Defence has not disputed about these documents, hence it is clear that the charge sbeeted employee has continued to cemain absem without any further information and withous sauction from (5-11-1993)

- (4) Whether on explanation was called to join back for duty surmediately, Presenting Officer has relied upon M.P. 10, as per this a letter has been sent to Shri B.M. Mahadevappa from Sr Manager, Staff Section, Head Office, Bellary. It has been stated that charge sheeted employee has neither submitted leave application not reported for duty. Remaining absent for daily without any message amounts. to unauthorised absent. Inspite of soveral advises, charge sheeted employee has continued to old habit of remaining anauthorised absence for duty. He has been instructed to report back for duty in mediately. I urther an explanation was also called from him. On the other hand Defence Representative has not disputed these documents. Hence it is alear that Bank has called an explanation to join back for duty immediately.
- (3) Whether charged shedred employee has reported back for duty only on 30 (9)-1903.

As per exhibit M.L. If it is clear that charge sheeted employee has reported for duty on 20th January, 1993 and in the said letter by has not mentioned, the reasons for the long absence. On the other hand Defence has not disputed about the said document. Hence it is clear that charge sheeted employee has reported for duty on 50(0)-1993 enly.

(6) By remaining absent without satisfation of large from 15-33, 1992 to 29-01-1993 whether charge sheeted employee has violated guidelines of the bank and regulation 22 of the T.G. Bank is slaff Service Regulation 1980.

Presenting Office) has stated that charge sheeted employee has remained absent for doty from 15-11 1992 to 29-01-1993 basing on the exhibit M.E. 9 (Proceedings of the Chairman treating the said period as one without sanction). M.E.14 (extract of abordance signing register). ME.13 extract of anerodance marking register this clearly shows that the said period has been treated as one without sanction. On the other hand Detence Representative has taken the plea that charge sheeted employed has availed leave from 15-11 1992 to 29-01-1993 and reasons for availness was ill health. He has also stated that he has taken treatment from local Doctors who will not assue any certificate so he camput produce the certificate.

If the above contention of DR is true charge socied Employee would have mentioned the same whole joining for thity (i.e. M.E.31) and immediately after receipt of proceeding of Chairman freating the above period as absent Herce, I am of the opinion that the plea of the DR that charge sheeted employee was suffering from ill bealth and raken treatment from local Ductor's far from truth and crested. for the purpose. So his plea is not acceptable As per exhibit M 15.15 and M.F. 16 it is clearly advised that Medical certificates should be submitted along with leave application immediately after keeping thinself absent for daily form staff member bence plea of Defence. Representative is not acceptable as per exhibit M.E. 36.

Basing on the arrove findings discussed in detail under \$1. Nos, I to 6 it is established that Shri B. Mahadevappa had applied leave room 9-11-, 992 to 14-11-1992 i.e. for six days and in was sanctioned from Head Office, While sanctioning the leave he was strictly instructed to repen back for duty from 16-11-1992, charge. shapted employee extended the leave upto 19/17/1992 vale his letter dated 16/17/1992. Though he was expected to report back for duly on 20th November, 1992, he continued to remain absent without further information from 15/11/1992 to 39/04/1993 (e. for 76 days, by has violated the guidelines of the Bank and also Service Regulations. It is also established that an explanation was called for his absence. olde letter dated 07/12/1992. Charge shoetee. amployee's long absonce has also effected normal functioning of the bask, thus the employee has committed an act of misconduct furnishable under Service regulation 30% If readwith regulation 22(2) of Tungabbadia Gramin. Back (Staff) Service Regulation (986) "

Therefore, from the reading of the afor said reasonings given by the enquiry officer, by no stretch of imagination it can be said that his conclusion in holding that the first party committed the misconduct of unauthorised absence was without any sufficient and legal evidence. The enquiry officer in length has discussed the eral and documentary evidence produced before him and has rightly come to the conclusion that the first party committed the misconduct of unauthorised absence from duty for the period mentioned in the charge sheet. Therefore, findings of the enquiry officer being supported by sufficient and legal, evidence, in turn, supported by eagent and valid reasonings by no stretch of imagination they can be termed as perverse to be interfered at the hands of this tribunal. In the result, it is to be held that the charge of misconduct leveled against the first purty in the second charge sheet also stands proved.

Now, coming to the question of quantum of the ponishment. It was well argued for the management that the first party is a chronic absence having absolutely on regard for his dury and that because of his prolonged unauthorised absence, the management bank's functioning has been affected causing inconvenience to its customers ar large. As seen from the first charge sheet, he remained agsent from duty for a total period of 226 days and whereas as per the second charge sheet his period of absence was 76 days only. Though he claimed to have suffered from ill health, produced no medical certificates either along with the leave application or while reporting for duty. Infact, as noted above, he remained absent from duty against the leave sanctioned only for about a period of 12 days and for the rest of the period he was remaining absent anauthorisedly even without leave applications, much less. deing accompanied by any medical certificate. The stand taken by him that he was being treated by the native doctors has not been supported by any evidence except his selfserving statements. Therefore, keeping in view the conduct of the first party, in my opinion he deserves no sympathy Japan the hands of this tribunal. He deserves no punishment lesser than removal from service. The reference on hand as controlled for the management also is not entertainable for the inordinate delay of 8 years caused in raising the dispute. The first party gave no reasons or offered any explanation as to what prevented him not to raise the (Sepure for about a period of 8 years after his appeal against the impugned order was dismissed by the appellate commercy. This conduct of the first party again tells the tale upon his conduct that he was never diligent and interested either to perform his duties or to continue his services under the management. The bank institutions custict afford an employee like the first party who remains absent from duty for no good reasons affecting smooth functioning of bank business. In the result, reference deserves no merit and hence the following award

AWARD

The reference stands dismissed. No costs.

(Dictated to PA transcribed by her corrected and signed by me on 26th June, 2007).

A. R. SIDDIQUI, Presiding Or ^Feer नई विल्ली, 9 जलाई, 2007

का,आ. 2140.— औद्योगिक विवाद अधिनियम, १०३१ (१९४७ का १४) की बारा 17 के अनुसरण में, केन्द्रीय सरकार तुंगमहा ग्रामीए कैंक के प्रवंपतंत्र के संबद्ध नियोजकों और उपयो कर्मकारों के बीच, अनुसंध में निर्दिष्ट औद्योगिक विवाद में कन्द्रीय सरकार औद्योगिक अधिकरण, बैंगलीर के पंचाट (संदर्भ संख्या 09/1994) को प्रकाशित करती है, को केन्द्रीय वरकार बंग 09-07-2007 को प्राप्त हुआ था।

[सं. एल-12012/227/93-आई झा.(बी-1)] अंदर कुमार, डेन्क अधिकारी

New Delhi, the 9th July, 2007.

S.O. 2140.—In pursuance of Section 17 of the Industrial Disputes Act. 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 09/1994) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore, as shown in the Annexure in the Industrial Dispute between the management of Tungabbadra Gramina Bank and their workmen, received by the Central Government on 09-07-2007.

[No.L-120] 2/227/93-IRTB QI AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE 560022

Dated : 22nd June, 2007

PRENENT:

Shri A. R. Siddiqui, Presiding Officer C.R. No. 69/1994

I PARTY

The General Secretary.
Tongabhadra Gramin Bank
Employees Union,
144, Kappgal Road,
Bellary-583 103

T PARTY

The Chairman, Tungabhadra Gramin Bank, No. 32, Sanganakal Road, Gandhi Nugar, BELLARY-S83 103

AWARD

I The Central Government by exercising the powers conferred by clause (d) of sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. L-12010/227/93-IR (B-I) detect 3rd January, 1994 for adjunication on the tollowing schedule?

SCHEDULE

"Whether the action of the management of Tungabhadra Gramin Bank in imposing the penalty of Suppage of Seven increments with cumulative effect in respect of Shri T. Basavareddy. Clerk vide proceedings dated 27-03-1992 is legal and justific d? If you to what relief the workman is emified."

 A aborge sheet dated 24-02 - 1990 came to be issued to the first party workington the following terms.

"Whethas there are prima facile grounds for believing that you have been guilty of misconduct, the particulars whereof are given below, this charge sheet has been drawn up against you and you are hereby request to submit to me within 7 days of receipt of toils criging sheet, a statement in writing setting both your defence. I any and showing cause as to why again priate penalty should not be imposed upon that

CHARGE:1

Write you were working at Gintgera Branch, you an a steaght outside activities and involved yourself it a steam cots helling business. During time-July, 1980 second you sold around 70 Kgs, of Colloasceds to verifice termers of Gintgera and surrounding time, 22. According them include following farmers of course of CVI Second to CVI Second them include following farmers of course of CVI Second to CVI Second them include following farmers of course of CVI Second them include following farmers of course of CVI Second to CVI Second them include following farmers of course of CVI Second to CVI Second them include following farmers of course of the CVI Second to CVI Second them include following farmers of course of the CVI Second to CVI Second to CVI Second them include following farmers of course of the CVI Second to CVI Second them include following farmers of course of the CVI Second to CVI Second them include following farmers of course of the CVI Second to CVI Second them include following farmers of course of the CVI Second them include following farmers of course of the CVI Second them include following farmers of course of the CVI Second them include following farmers of course of the CVI Second them include following farmers of course of the CVI Second them include following farmers of course of the CVI Second them include following farmers of course of the CVI Second them include following farmers of course of the CVI Second them include following farmers of course of the CVI Second them include following farmers of course of the CVI Second them include following farmers of course of the CVI Second them include following farmers of course of the CVI Second them include following farmers of course of the CVI Second them include following farmers of course of the CVI Second them include following farmers of course of the CVI Second them include following farmers of course of the CVI Second them include following farmers of course of the CVI Second them include following farmers of course of the CVI Second th

- Stoi Sarvappa S/o Sarrappa.
- Bioleosab S/o Bahasah Bagali
- 5 Seddagger Opper S/o Knirappa
- Mchdin Sab Shi Hussain Sab
- Nikakappo S/o Ningappa Ginigera;

Artisting these persons form S. No. 2 to 3 have availed Coop into them out Giorgera branch

We have sold the collenseeds to the said carmers by informing them that they were of "DCH32" variety whereas they were not of that standard or quainty. It is fattners made it for granted because of your wideled continuous to know that the seeds have to quality seeds only after about 2 months of \$100.00, by wherea time the farmers had made considerable cavestment on the crops by way critizal Square that about charges etc. Because of

the duplicate and sub-standard seeds supplied by you the farmers have not only lost the investment made on the entry but also have loss their valuable crop itself.

You have thus caused heavy loss to the farmers who had purchased the seeds from you which altimately resulted in complaints and loss of image to the long Hence, you above sale of seeds is derineousline the inferests of the bank. By using your official position for profit and by acting his matter derrimental to the interests of the bank you have committed misconduct under Regulation (30(2)) of TGB. Staff Service Regulations, 1980.

CHARGE: 2

While working as Junior Clerk at nor Gingera branch you have sold about 70 Kgs, of cottonseeds to fatimets/bustomers of surrounding visiages of Ginigera. You have thus involved yourselving sabsidiary ecovities of earthing. As per Regulation. No. 21 of TGB (Staff) Regulations, 198(the which you are bound, you were supposed not to engage yourself in any activity putside the scope of your employment without the express prior permission from the competent authority. By indulging yourself in the activity of stiring contenseeds you have committed biesen of the said aggulation No. 21 of TGB (Staff) Regulations, 1980, and by committing breach of the said Regulations of 21 of TGR (S. 15) Service Regulations, 1980 you have committed misconduct under Regulation 30 (1) of TGR (8 (d)) Service Regulations, (980) 7

 The explanation turnshed by the first party not being found satisfactory Dimnestic Haquiry was ordered against him. On the canchasion of the enquiry proceedings. the enquiry officer substitled his report dated [6-14-199]. with a conclusion that both the charges fevelled against the first party in the charge sheet have not been proved and that the first party is not guilty of the of presud charges. The Disciplinary Authority however, thd not agree with the findings of the enquity officer exonerating the larse party from the charges levelled against him and giving his own reasons held the workman gailty of the charges vide order dated 20,00, 1992 and sent this order copy of the first party along with the anguity report proposing the protehment of stoppage of seven increments with cumulative effect asking the first party to show cause in writing as to why the above said penalty should not be imposed upon him. It appears from the enquiry records that in response to the said order of the Disciplinary Authority, the first party submitted his explanation dated 16-03-1992 as to why the enquiry officer's findings should be accepted and that the reasons given by the Disciplinary. Authority in not accepting the same were against the evidence brought on record. However, the Disciplinary

Authority by the impugned punishment order dated 27-3-1992 rejected the above said explanation offered by the first party and confirmed the above said proposed punishment of stoppage of seven increments with comulative effect. The first party then made an unsuccessful attempt in preferring appeal against the said punishment order to the board of Directors, Tungabhadra Grancena Bank Head Quarter, Bellary as his appeal came to be dismissed by order dated 22-10-1992. The first party then raised an industrial dispute resulting into the present reference proceedings.

The first party in his claim statement chatlenged. the very authority of the management in conducting the enquiry proceedings under the provisions of Tungabhadra Gramin Bank (Staff) Service Regulations, 1980 in the absence of certified standing orders of the management and took a contention that there being no certified standing orders as required under the Industrial Employment (Standing Orders) Act, 1946. With respect to the merits of the case the first party contended that after holding the enquiry, the enquiry officer submitted his report datest 36-10-1991 and after considering the evidence brought on record he came to the conclusion that the first party as not indulged himself in selling contonseeds and there was no :tan tage to the image of the hank. He came to the conclusion that both the charges levelled against the first party have not been proved and gave his findings accordingly. However, the Disciplinary Authority having no powers to differ with the findings of the enquiry officer under the aforesaid Regulations has given its own findings to the effect that on the basis of the evidence ted during the course of enquiry, charges of misconduct have been proved and he gave his findings contrary to the findings of the enquiry officer. The first party contended that before passing of this order in giving the findings contrary to the iindings of the enquiry officer, the Disciplinary Authority did not issue a proposition notice to him setting forth its proposal to differ from the findings of the enquiry officer along with the reasons therefore and called upon the first party to show cause as to why the Disciplinary Authority should not set aside the findings of the enquiry officer excoerating him from the charges. He was not given any notice and no opportunity was given to him in total contravention of the principles of natural justice and proposed the punishment of stoppage of seven increments with cumulative effect asking him to give representation on the quantum of the punishment itself. Therefore, the first party contended that the findings of the enquiry officer were well based on the evidence on record and the Disciplinary Authority was not justified in coming to the conclusion contrary to the findings of the enquiry officer and since the order to the Disciplinary Authority suffered. from violation of principles of natural justice not affording him opportunity of hearing before such punishment was proposed holding him guilty of the charges, is liable to be set aside as illegal, arbitrary and discriminatory in nature.

- The management by its Counter Statement while. contending that the Disciplinary Authority has got every right and authority to initiate the disciplinary proceedings. against the first party under the aforesaid Regulations rightly, conducted the enquiry proceedings and rightly differed from the findings of the enquiry officer in holding. the first party guilty of the charges. The Management: contended that after the enquiry findings were submitted to the Disciplinary Authority by the Enquiry Officer, on detailed examination it was found that the enquity officer did not appreciate the materials properly and has come to the conclusion only by relying upon the evidence of the first party workman and therefore, the findings were perverse. The Disciplinary Authority therefore, on going through the entire enquiry records came to the conclusion. that there was sufficient material on record to establish the misconduct committed by the first party workman and therefore, rejected the findings of the enquiry officer and issued a show cause notice dated 20-02-1992 proposing the punishment of stoppage of seven increments with cumulative effect giving the reasons to coming to the ennelusion that charges of misconduct were proved against the first party. Thereafter, the first party was called upon to submit his explanation if any, over the proposed punishment. Therefore, the management contended that the reasonings given by the Disciplinary Authority in holding the workman guilty of the charges as against the findings of the enquiry officer expandating him from the charges was legat und justified in the light of the evidence. brought on record and that the first party by way of second show cause notice was given an opportunity of bearing on the quantum of the punishment and in the result, there was no violation of principles of natural justice and requested this tribunal to reject the reference.
- 6. As, could be read from the order sheet maintained by this tribunal, on 19-1-1999 a memo was filed for the first party workman conceding the fairness and validity of the enquiry and with the consent of the parties the enquiry file papers were marked at Ex. M1. By award dated 1-6-2001, my learned predecessor rejected the reference. Aggricved by this award the first party approached the Hon'ble High Court in Writ Petition No. 39265/61. His Lordship of Hon'ble High Court quashed the impugned award and remitted the matter back to this tribunal for fresh adjudication, expeditiously.
- 7. After the remand, I have heard the learned counsels for the respective parties and posted the matter this day for award. Therefore, in the light of the respective contentions of the parties and in the face of the finding recorded by this tribunal, that the DE conducted against the first party is fair and proper (being conceded by the first party) the point to be considered would be "whether the impugned punishment order dated 20-7-1992 passed by the Management/Disciplinary Authority in disagreeing with the findings of the anquiry officer in exomerating the

first party from the charges of misconduct leveled against him is legal and justified".

- Learned, counsel for the first party in his argument. submitted that the impugned punishment order suffered from violation of principles of natural justice as the Disciplinary Authority while disagreeing with the findings of the enquiry officer did not afford any opportunity of bearing setting forth the reasons in coming to the conclusion different from the conclusion arrived at by the enquiry offices. He contended that the Disciplinary Authority without setting forth the reasons and assuing proposition notice in disagreeing from the findings of the Enquiry Officer two-motorecorded the fundings of the guilt holding the workman guilty of the charges and issued a show a cause notice along with the enquiry report calling upon the first party to submit his explanation only on the quantum of the punishment. Therefore, learned counselsubmitted that if at all the Disciplinary Authority wanted to differ from the findings of the Enquiry Officer, it must have set out the reasons in detail with a proposition notice. as to why he should disagree with the enquiry findings. giving him opportunity of hearing on the point and since it. has not been doing in the present case, the principles of natural justice have been violated and in the result, the impugned punishment is liable to be set aside. To support his argument learned counsel cited a ruling reported in AIR 1998 SC page 2713 - Punjab National Bank & Others Appellants V. Kunj Behari Misra. On the point that Regulations religited to supra do not confer powers upon the Disciplinary Authority to issue the charge sheet and conduct the enquiry proceedings, learned counsel referred. to a decision repérted in ILR 1996 Kar 2069.
- Whereas, learned counsel for the management. vehemently, argued that the order dated 20-02-1992 passed. by the Disciplinary Authority in disagreeing with the fundings of the Enquiry Stricer has very much set out the reasonings based on the materials brought on record during the course of enquiry and this order was communicated to the first party along with the enquiry report seeking his explanation to the quantum of the punishment, and therefore, it cumpot be said that the first party was not given any opportunity of hearing before the impurged punishment order was passed. Learned counsel therefore. submitted that in passing the above said order, the Disciplinary Authority has very much complied and sabered to the principles of natural justice as contemplated. under the principle iaid down by their Lordships of Supreme. court in the case referred to supra cited on behalf of the first party. To support his arguments learned counsel also filed a copy of the decision of the Supreme Court reported in AIR 1998 SC 2013.
- 10. On going through the records, more so, the aforesaid order dated 20-02-1992 passed by the Disciplinary Authority and communicated to the first party

along with the report and in the light of the principle laid down by their Lordships of Supreme Court in the aforesaid decision. I am not inclined to accept the arguments advanced for the management that principles of natural justice have been adhered to by the Disciplinary Authority before passing the impunged punishment order. On the point as to what should be the procedure to be followed by the Disciplinary Authority while disagreeing with the findings of the Enquiry Sifficet in exoperating the delinquent concerned from the charges of misconduct alleged to have been committed by him, their Lordships of Supreme Court at Para 18 of the said decision laid down the principle as under:

"The Disciplinary Proceedings break into two stages." The first stage ends when the disciplinary authority arrives at its conclusions on the hasis of the evidence, Enquiry Officer's report and the delinquent employee's reply to it. The second stage begins when the Disciplinary Authority decides to impose penalty. 00 the basis of the conclusions. It is necessary for the authority which is to finally record and an adverse finding to give hearing to the delinquent officer. If the Enquiry Officer had given an adverse finding, the first stage required an opportunity to be given to the employee to represent to the Disciplinary authority. Even when an earlier opportunity had been greated to them by the Enquary officer, It will, therefore, not stand to reason that when the finding in favour of the delanquent officers is proposed to be overtunied by the disciplinary authority then no apportunity should be granted. The first stage of the enquiry is not completed till the disciplinary authority has recorded it findings. Under Regn. 6 the enquiry proceedings can be conducted either by an enquiry officer or by the disciplinary authority itself. When the enquiry is conducted by the enquiry officer his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with decision of the disciplinary authority. It is he disciplinary authority which can impose the penaity. and not the enquiry officer. Where the disciplinary authority differs with the view of the angulay office: and proposes to come to a different conclusion, there is no season as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous where the rhanged officers succeed before the enquiry officer they are deprised of representing. to the disciplinary authority before that authority differs with the enquiry officer's report, and, while recording a finding of guilt, imposes punishment or the officer. In any such situation the charged officer must have an opportunity to regresent before the Disciplinary Authority before final findings on the charges are recorded and punishment imposed. This

is required to be done as a part of the first state of enquiry."

11. Therefore, from the reading of the aforesaid observations made by their Lordship of Supreme Court, it becomes crystal clear that the delinquent concerned cannot be deprived of representing to the disciplinary authority before that authority differs with the enquiry officers report and while recording a funding of guilt imposes punishment. on the officer (delinquent concerned). Their Lordship further held that in any such situation the charged officer. (the delinquent) must have an opportunity to represent before the Disciplinary Authority before final findings on the charge are recorded and punishment imposed. Therefore, in the light of the principles laid down by their Lordship of Supreme Court at the aforesaid para and the observations made by them at Paras 16 & 17 of the decision, it gets clear that the Disciplinary Authority in case of disagreeing with the enquiry officers findings must isuge a show case notice to the employee concerned, giving him the tentative reasons for is disagreement with the enquiry officers findings and after considering the representation. made by him to the show cause potice, shall pass fresh orders recording his reasons. It is further made clear that while doing so the Disciplinary Authority shall send the enquiry report along with the show cause notice issued to the first party. In the instant case as argued for the first party this requirement of issuing the above cause notice to the first party giving him the tentative reasons for disagreement to the enquiry officer's findings has not been fulfilled. In the instant case what the disciplinary authority. has done is that after it received the enquiry officer's findings, went through the findings and passed an order dated 20-02-1992 holding the workman guilty of both the charges levelled against birn in the charge sheet by giving out the reasons in coming to the conclusion that the first party was guilty of the charges. By the aforesaid order, the Disciplinary Authority proposed the punishment in question and called upon the fist party to show cause as to why the punishment should not be confirmed. Therefore, before passing this order in proposing the impunged punishement and recording the finding that the first party has been found guilty of the charges, the disciplinary authority did not given opportunity of hearing to the first party by issuing a show cause notice and setting out tentative reasons for its disagreement with the enquiry officer's finding calling upon his explanation as to why it should disagree with the findings of the enquiry officer. In the instant case the disciplinary straightaway after the receipt of the enquiry report held the first party guilty of the charges giving the findings of its own and then proposed the impunged punishment and the only opportunity of submitting the explanation given to him. was with respect to the quantum of the punishment and not on the point as to why the Disciplinary Authority

should differ from the findings of the enquiry officer. In the result, the principle laid down by their Lordship of Sources: Court which infact have not been disputed by the management also, must lend support to the case of the first party that he has been denied the opportunity of hearing. by the disciplinary authority before the authority passed. an order giving findings against the first party holding him. guilty of the charges and before proposing the ponishment. of stoppage of increments, as noted, above. Therefore, in the light of the aforesaid discussion, the only conclusion to be drawn would be that the order dated 20-02-1992 pessed. by the disciplinary authority proposing the impugned punishment resulting into the impugned punishment order dated 27-3-1992 suffered from violation of principles of natural justice and therefore, both the orders are liable to be set aside not being sustainable in the eye of law. In the aforesaid decision their Lordship of Supreme Court did not remand the matter to the disciplinary authority for the start of denova proceedings to give such an opportunity. of hearing to the delinquent concerned before the punishment order was passed as the dispute in the said. decision was more than 15 years old, one of the delinquent. being already dead and the other delinquent had been attained the age of superannuation. In the insum case also it appears to me that it will not be in the interest of justice in remanding the matter to the Disciplinary Authority to afford such an opportunity of bearing to the first party before passing of the impugned punishment order as the dispute in the present case also is for the alleged misconduct committed in the year 1992 and we are now in the year 2007, a period of about 15 years having already. been clapsed. One more reason not to remand the matter. for fresh disposal to the disciplinary authority is the nature. of the alteged misconduct said to have been committed by the first party workman not loosing sight of the fact that the findings of the enquiry officer have gone in his favour. In the result, the only order to be passed in this case would. be to set aside the impagned panishment order directing. the management to release the seven increments stopped. by it against the first party with consequential benefits. Hence the following award:

AWARD

The management is directed to release the seven increments stopped by it and shall reimburse the first party for the loss he sustain on account of stoppage of those seven increments from the date of the panishment order till today and herein onwards. No Costs.

(Dictated to PA, transcribed by her corrected and signed by me on 22nd June, 2007)

A. R. SIDDIQUI, Presiding Officer

नई दिल्ली, 11 जुलाई, 2007

का.आ. 2141.— औद्योगिक विवाद अधिनियम, 1947 (1941) क. १४। को था। 17 के अनुसरण में, केन्द्रीय सरकार है, सो, एल. के प्रवंधतंत्र के सबंद्ध नियाजकों और उनके कर्मकारों के बरेच, अनुवंध में निर्दिश्य औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, आसनसौल के पैचाट (संदर्भ संख्या 19/1996) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-07-2007 को प्राप्त हुआ था।

> [सं. एल-22012/485/5995-आईआर(सी-1[)] अजय कुमरर गैंड, डेस्क अधिकारी

New Delha, the 11th July, 2007.

S.O. ,2141. In parsuance of Section 17 of the Industrial Disputes Act. 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 19/1996) of the Central Government Industrial Tribunal-cum-Labour Court, Asansyl as shown in the Annexure in the Industrial Dispute between the employers in relation to the stangement of ECI, and their workman, which was reversed by the Central Government on 11-07-2007.

(No.1-22012485/1995-JR (C-ID)

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT:

Shri Md. Sarfaraz Khan, Presiding Officer
Reference No. 19 of 1996

PARTIES: The Agent, Bahula Collicry of E.C.I... Burdwan

Ves.

The A: General Secretary, Colliery Mazdoor, Union, Ukhra, Burdwan.

REPRESENTATIVES

For the Management: SriP. K. Das, Advocate.

For the Union (Workman): Sri M. Mukherjee, Advocate

INDUSTRY: COAL STATE: WEST BENGAL

Dated the 25-01-2005

AWARD

In exercise of powers conferred by clause (d) of Subsection (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act. 1947 (14 of 1947), Govt. of India. Peologic the Ministry of Labour vide its letter No. 1-220 (2/ 485/1995) TK (C 10) dated 02-05-1998 has been pleased to refer the following dispute for adjudacation by this Tribunal.

SCHEDULE

"Whether the action of the management of Bolista Colliery under Kenda Area of M/s. ECL in dismissing the services of Sh. Sahden Majhi, 4x-U.G. Loader is legal and justified? If not, what relief the concerned workman is entitled to ?"

- 2. Afterhaving received the Order No. L-22012/485/1995-IR (C-II) dated 02-05-96 of the said reference from the Govt, of India. Ministry of I about. New Delhi, for adjudication of the dispute, a reference case No. 19 of 1996 was registered on 09-05-96 and occordingly an order to that effect was passed to issue notices to the respective parties through the registered post directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In compliance of the said order notices by the registered post were issued to the respective parties. Sri M. Mukhertee, Advocate for the delinquent workman and Sri P.K. Das. Advocate for the management appeared and filed their respective statement in support of their case.
- 3. In brief compass the case of the union as set forth in the written statement is that Sh. Sahdeo Majhi was a permanent employee of Bahula Cofficery under the E. C. Lid. The delinquent workman was compelled to remain absent from his duty w.e.f. 03-07-97 on account of his illness and he was undergoing medical treatment from different dectors nearby his native place of Girigin. Due to his such absentecism the management has dismissed Shri Sahdeo Majhi from his service on 27-05-93.
- 4. The main case of the union is that no enquiry was ever held before dismissing the said employee or even if held, the workman was not given any opportunity to detend himself. Before the enquiry be was not even intimated that the enquiry is going to be held against him. As such the dismissal order is illegal, arbitrary/whamsteal colourable, exercise of power and viniative of principle of natural justice.
- 5. It is also the case of the amounthal before issuing dismissal order the management did not supply the copy of enquiry proceeding, unquiry report and proposed punishment is claimed to be ab-unite illegal and fit to be set aside in this score alone.
- 6. The further case of the union is that by awarding capital punishment the management has statched away the byely-hood and bread of the workman, causing great hardship to the family in these days of acute unemployment. The quantum of punishment imposed is claimed to be too harsh and this proportionate to the gravity of the miscendict alleged. Accordingly the union has sought a relief for setting aside the dismissal order and to reinstate the workman to his service together with all the back wages and the order financial benefit with the continuity of the service.
- On the other hand the defence case as per the averments made in its written statement is that the instant

reference as referred to the Hon'ble Tribunal is entirely misconceived and the same is not maintainable in law. Besides this there are no valid reason or ground for initiating any industrial dispute on terms of reference as referred by the appropriate Govt, for adjudication before this Tribunal.

- The main defence version of the management is that Sri Sahdeo Majhi, Ex-U.G. Loader, Bahula Colliery was absenting from duty since 03-07-92 without prior permission. or authorized leave or any satisfactory cause and for which he was chargesheeted for his misconduct. Since the concerned workman was not available in the colliery, the copy of the charge sheet was sent to his home address. together with letter of enquiry vide letter No. Agent/BC/ C.6E/68 dated 17-02-93 and the copy of enquiry letter was: also published in the local News Paper dated 25-02-93. published from Assausol, but in spite of the publication and sending letter to the home address the concerned workman neither appeared hefore the Enquiry Officer nor sent any wratten intimation stating the reason of his inability to attend the enquiry and as such the enquiry was held ex-parte. The said enquiry officer after holding the enquiry proceeding submitted his findings before the competent authority who subsequently after considering the said enquiry proceedings, its report, chargesheet and other connected papers of the said employee awarded a punishment of dismissal from his service. The copy of the order of dismissal was sent to the concerned workman. vide letter No. Pers/KND/Termination/1791 dated 27-05-93.
- 9. Lastly the contention of the management is that the order of dismissal was rightly passed by the competent authority in accordance with the provisions of Standing Orders applicable to the establishment. The management densed the contention of the union made in its written statement claiming them to be totally wrong, baseless and beyond the scope of truth. The punishment is also claimed to be not disproportionate rather the same is just, proper, lega, and the union is not entitled to get any relief or reliefs us prayed for.
- 10. From perusal of the record it transpires that on 03-09-98 a hearing on preliminary point was made and the validity and fairness of the enquiry proceeding was held to be invalid. It is further clear from the order sheet dated 16-10-98 that the request of the management, an adjournment was granted for filling the affidavit of the wirness and other documents. The order sheets further indicate that right from 27-11-98 to 25-03-03 several adjournments were granted to the management for adducing evidence but to no effect and ultimately the evidence of the management has closed and the case was fixed for hearing. The argument enhanced by the parties were heard in detail on 25-01-05 and the award was reserved for order.
- 11. In view of the pleadings of the parties and the materials available on the record I do find certain facts.

- which are admitted by the respective parties. So before entering into the discussion of the merit of the case I would like to mention those facts which are admitted one.
- 12. It is the admitted fact that Sh. Sahdeo Majhi, Ex-U.G. Loader was the permanent amployee of Bahula Colliery under Kenda area of M/s. Eastern Coalfield Limited.
- 13. It is also the admitted fact that the delinquent employee was absent from his duty with effect from 03-07-92 to 11-11-92 without any leave or prior permission and information to the management.
- 14. It is further admitted case of the parties that the workman concerned was chargesheeted on 11-11-92 for his unauthorized absence from duty w.e.f. 03-07-92 to 11-11-92 and an Ex-parte domestic enquiry was conducted by the management holding him guilty for the misconduct of unauthorized absence for the said relevant period in question.
- . 15. It is also admitted fact that there is no chargesheet against the workman concerned for being habitual absence. It is the settled principle of law that the facts admitted need not be proved. Since these all facts are admitted one, so I do not think proper to discuss the same in detail.
- 16. On perusal of the records it transpires that none of the parties has examined any oral witness in support of their case rather they have filed Xerox copies of some documents. The management has filed the Xerox copy of the chargesheet, enquiry proceedings along with the reports, notice of enquiry proceeding dued 17-02-93 and one Local News Paper Dainik Lipi of Asansoi.
- 17. Likewise the union has also filed treatment paper of Sh. Sahdeo Hansda issued by Mohulpahari Christian Hospital for the disease of U.T.L. Prescription dated 28-7-92 granted by the Dr. V.N. Singh, C.A.S., Palajori, Deoghar, pathological examination report of urine of the concerned workman dated 07-04-93 granted from Aftab Hospital Pachambe Gindih and prescription issued by Aftab Hospital, Gindih.
- The management in para I of its written statement. has taken the plea that the instant reference is bud in the eye of law as the same is legally not maintainable. It is also claimed that in the prevailing facts and circumstances of the case the dispute is misconceived one. But the aforesaid issue was neither raised not pressed by the management during the course of hearing of the said reference. The management has neither examined any oral witness por tendered even a chir of paper in support of its plea. As such I do not find any defect in the maintainability of the reference and the facts of the case very well comes under the purview of Industrial Disputes Act. The Govt. of India through the Ministry of Lubour has rightly referred. the dispute to this Tribunal for its adjudication and as such this issue is decided in favour of the union and against the management.

- 19. Admittedly the management in order to prove the fact that the chargesheet vide letter No. Agent/BC/PD/ C-bE/31/92/789 dated 11-11-92 and letter of enquiry vide letter No. Agent/BC/C-bE/68 dated 17 02-93 were sent to the home; address of the delinquent workman has filed the Xerox copies of the said documents but in spite of giving several opportunity to the management to produce the pean book or any other proof to show that the chargesheet was ever served or that notices were served on or offered in the workman, the management hopelessly failed to contiply or produce the said relevant documents in support of its contention. Besides this the publication of the enquity letter in the Local News paper dated 25-02-93 published from Asansol is also not helpful to the management because of the fact that the delinquent workman, a home address is of the district of Dumka, where this I coal News paper of Asansol is not expected to be available. As such keeping in view of these all relevant facts the then Presiding Officer of this Tribunal has nightly beld the chquiry proceeding to be unfair and invalid. Apart from this fact the management was subsequently given several opportunity to prove the fairness and validity of the enquity proceeding by examining the witnesses and tendering the concerned relevant documents before the cour, of tribunal but the management unterly failed in this regard. It was the bounders duty of the management to show and prove before the court of tribunal that the communication was sent on proper address by registered cost. The union has categorically decied the charges revelled against him by fifing his written statement. No concorrunity of hearing was given to the workman a neerned. Date, time and place of enquiry was not mt muted to him. Manner in which the enquiry proceeding was conducted was not in conformity with the principles of natural justice. So charges cannot be said to have been proved in absence of evidence being led by the management and the order of dismissal based on such enquity report cannot be sustained.
- 20 Now the next main point for consideration before the (1981) is to see as to how far the punishment of dismissal awarded to the delinquent workman by the management is just ask! proper and is proportionate to the alleged nature of misconduc.
- It lieurd both the parties on the aforesaid point in spectron, it was submitted by the side of the union that at best it can be said to be a simple case of unauthorized absence mity for about four months and the absence from duty during the relevant period is duly explained and the reasons offabsence supported with medical certificate are sufficient enough. Treatment paper of Sh. Sahdeo Hansda issued by Mohulpahuri Christian Hospital prescription granted by Dr. V. N. Singh in favour of the workman concerned, treatment paper issued by Afrah Hospital, Cirioth and pathological report of Sh. Sahdeo Majhi go to show that the delinquent, workman was suffering from

- U.T.I. Causingpartial impotency and Mental weakness as well. I find much force in the argument of the union side and I am convinced to hold that the workman concerned was admittedly obsent from his duty during the relevant persod under the said compelling circomstances which was beyond his control.
- 22. It was further argued that the delinquent workman has got unblemish record during his service tenure and since there has not been any complain of any misconduct either by unauthorized absence or any other sort of misconduct. The management has also not chargesheeted him for habitual absenteers mor any chit of paper in this regard has been filed in the court nor there is any picarling in the written statement of the management in this regard. So it can very well be concluded that it is admittedly the first offence of unauthorized absence for which no prior permission was taken or any information could be sent to the authority concerned. But the said reasons have been sufficiently explained and supported by the medical certificates indicating the compelling circumstances beyond the control of the delinqueer workman
- 23. It was also argued out by the side of the union that it is a simple case of an unauthorized absence for a few months under the competing circumstance which caused be said to be a gross misconduct. The amention of the court was drawn towards the provisions of Model Standing Order where the extreme possistment prescribed is dismissal as per the gravity of the misconduct and it was claimed that the extreme penalty cannot be imposed upon the workman in such a more case of alleged misconduct of an unauthorized absence for a few months. The points of argument has got much force and conveniencing as well.
- 24. It has been several times observed by the different Hon'ble High Courts and the Apex Court as well that before imposing a punishment of dismissal it is necessary for the disriplinary authority to consider the socie-economic background of the workman, his family background, length of service put in by the employee, his past record and other surrounding encumstance including the nature of the misconduct and lastly the compelling circumstance to commit the misconduct. These are the relevant factors which mest have to be kept in mind by the authority at the time of imposing the panishment which is not done by the management in this case.
- 25. Admittedly the workman concerned is an illiterate man of Majhr by caste who is the member of Scheduled Tribes and the member of the weaker section of the scorety. He is financially weak and poor who has suffered a lot for more than ten years. The amention of the court was drawn towards the provision of the Model Standarg Order land down under clause 27(1) (page) 5) where various minor punishment have been presented to be awarded according to the gravity of the misconduct. I fail to think as to why only maximum punishment available under the said clause should be awarded in the present facts and circumstage of

the case. It has been observed by the Apex court that justice must be tempered with mercy and that the delinquent workman should be given an opportunity to reform himself. and to be loyal and disciplinary employee of the management. Besides this it is also clear from the record and the argument of the union that second show cause notice was ever lissued to the concerned workman before passing the order of punishment of dismissal which is of course direct violation of the mandate of the Hon'ble Apex Court this respect. However, I am of the considered view that the punishment of dismissal for an unauthorized absence for about four months under the compelling circumstance and without any malafide intention is not just and proper rather it is too barsh a punishment which is totally disproportionate to the alleged misconduct. Such a simple case should have been dealt with leniently by the management. In this view of the mager I think it just and proper to modify and substitute the same exercising the power under Section 11 (A) of the Industrial Disputes Act, 1947 to meet the ends of justice and as such the impugned order of dismissal of the concerned workman is hereby set aside and he is directed to be reinstated with the continuity of the service and in the light of the prevailing facts. circumstance and the misconduct for which the punishment of dismissal was imposed on the workman concerned I think it appropriate that the delinquent employee he imposed a punishment of stoppage of two increments without any cumulative effect. It is further directed that the workman will be entitled to get only 50% of the back wages which will serve the ends of justice. Accordingly it is hereby.

ORDERED)

That let an "Award" be and the same is passed in favour of the workman concerned. Send the copies of the award to the Ministry of Labour, Govt. of India, New Delhi for information and needful. The reference is accordingly disposed of.

MD. SARFARAZ. KHAN. Presiding Officer नई दिल्ली, 11 जुलाई, 2007

का,आ. 2142.—औद्योगिक क्लिट अधिनियम. 1947 (1947 का 14) की भरा 17 के अनुसरण में, केन्द्रीय सरकार है सी. एल. के प्रबंधतंत्र में संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, असनसोल के पेंध्य (संदर्भ संख्या 1/2004) की प्रकाशित करती है, जो केन्द्रीय सरकार को 11-07-2007 को प्राप्त हुआ था।

> ृंसं. एल-22012/135/2003-आई.आर.(सीएम-11)) अवय कुमार गौड़, डंस्क अधिकारी

New Delhi, the 11th July, 2007

5.0. 2142.—In pursuance of Section 17 of the Industrial Disputes Act. 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 1/2004)

of the Central Government Industrial Tribunal-cum-Labour Court, Asansol, as shown in the Annexure in the Industrial Dispute between the management of Shyam Sunderpur Colliery of ECL and their workman, received by the Central Government on 11-07-2007.

JNo.L-22012/135/2003-IR (CM-II)]
AJAY KUMAR GAUR, Desk Officer
ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CLM-LABOUR COURT, ASANSOL

PRESENT

Sari Md. Sarfaraz Khan, Presiding Officer Reference No. 1 of 2004

PARTIES: The Agent Shyam Sunderpur Colliery of E.C.J. Bardwan.

Ms

The Jt. General Secretary, Ukhra Coffiery Mazdoor Umon, EVTUC Cinema Road, Ukhra, Burdwan.

RETRESENTATIVEN

For the Management: Sr. P. K. Das. Advocate.

For the union (Workman): Sri M. Mukherjee, Advocate INDUSTRY: COAL STATE: WEST BENGAL.

Dated the 26-06-2007.

AWARD

In exercise of powers conferred by clause (d) of Subsection (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Govt. of India, through the Ministry of Labour vide its letter No. 1, 22012/135/2003-IR (CM-II) dated 23:12-2003 has been pleased to refer the following dispute for adjudication by this Tribunal

SCHEDILE

"Whether the action of the management of Shyamsundarpur Colliery under Bankola Area of M/s. Eastern Coal fields Ltd. In dismissing Sri D. P. Patra, Pit Clerk from service is legal and justified? If 1001, to what relief is workman entitled?"

On having received the Order No. L-22012/135/2003-IR (CM II) dated 23-12-2003 from the Govt, India, Ministry of Labour. New Delhi, for adjudication of the dispute, a reference case No. 1 of 2004 was registered on 06-01-2004 and accordingly an order to that effect was passed to issued notices to the respective parties through the registered post directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of said order notices by the registered post were sent to the parties concerned, Sri P. K. Das, Advocate and Sri M. Mukherjee, Advocate appeared in the Court along with a letter of authority to represent the Management and the Union respectively and union filed its written statement in support of its respective claims.

From the perusal of the record it transpires that the record was fixed for filing the written statement by the side of the Management. It is further clear from the record that petition has been filed on behalf of the workman concerned stating therein that the workman concerned has been suffering from various aliments and due to shortage of money he is not in a position to get himself treated properly as the P.F. Account, gratuities etc. has not been dishursed of by the management on the plea of pendency of the instant reference. It is further stated that the workman concerned is not willing to proceed further with this case so he wants to withdraw his case so that his terminal benefit may be dishursed by the management.

In view of the above facts and circumstance of the workman concerned is allowed to withdraw his case and the management is directed to disburse his P.F. account, grantuity and other dues if any at the earliest so that the workman concerned can meet all the necessary expenditure regarding hit treatment. And such it is hereby

ORDERED

that let a "No Dispute Awarded" be and the same is passed. Send the copies of the award to the Government of India Manistry of Labour, New Delbi for information and needful. The reference is accordingly disposed off in the light of the prayer of the workman concented.

MD. SARFARAZ KHAN, Presiding Officer

पर्व दिल्ली, 17 जुलाई, 2007

का,आ., 2143.—औद्योगिक क्विवाद अधिनियम, 1947 (1947 का 14) की कार। 17 के अनुसरण में, केन्द्रीय सरकार एयर इंडिया लि. के प्रवंधतीन के संबद्ध नियोजकों और उनके कर्मकारों के बीच. अनुबंध में निर्विष्ट औद्योगिक व्विवाद में राष्ट्रीय औद्योगिक अधिकरण, अम न्यायालय !मुम्बई के पंचार (संदर्भ संख्या Camp. No. NTB-2 of 2004/ Arising out of Ref. No. 1790) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-07-2007 को प्राप्त हुआ था।

> [सं. एल-20013/2/2007-आई.आर.(सी-I)] त्नेह लता जवास, डेस्क अधिकारी

New Delhi, the 17th July, 2007

S.O. 2143,—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. Comp. No. NTB-2/2004/Arising Ref. No. NTB-1/90) of the National Industrial Tribunal-cum-Labour Court, Mumbai, now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Air India.

Ltd, and their workman, received by the Central Government on 11-07-2007.

[No.L-20013/2/2007-TR (C f)] SNEH LATA JAWAS, Desk Officer ANNEXURE

BRFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, MUMBAI PRESENT

Justice Ghanshyam Dass, Presiding Officer Complaint No. NTB-2 of 2004 (Arising out of Ref. No. NTB-1 of 1990)

PARTIES: Capt. Vikrant Sansare - Complainant

٧s.

Air India Ltd. : Opp. Party

APPEARANCE

For the Complainant . Absent

For the Opp. Party : Shri N. S. Lal, Advocate

STATE: Maharashtra

Mumbai, dated the 28th day of June, 2007.

AWARD

- Captain Vikrant Sansare, Senior Captain, Air India Ltd, General Secretary, Indian Pilots guild has moved the instant application under section 33(A) of the Industrial Disputes Act for the following reliefs.
 - (A) To quash and set aside the impugned order/ direction of the Opposite party dated 3-8-2004, threatening the complainant with dismissal.
 - (B) Pending the hearing and final disposal restrain the Opposite Party by an injunction from carrying out his threat of dismissing the Complainant or taking any other action against him.
 - (C) For Interim/Ad-Interint Relief's in the terms of prayer clause (b).
- 2. The marter remained pending for hearing for the last about 3 years. The order sheet goes to show that the complainant absented himself since the filling of the complaint. The notice was issued by the Office of the Tribunal and in pursuance there to, Mr. C. J. Joneson, Adv. appeared for the Complainant on 15-5-2007. The matter was adjourned on his request to 06-6-2007. None appeared for the complainant on 6 6 2007. The matter was posted for exparte hearing on 28-6-2007 i.e. today. None appeared for the Complainant today also. The Counsel for the Management Shri, N. S. Lal. Adv. for the Management is present.
- After going through the record. I find that the Complainant does not appear to be interested in prosecuting, his complaint. In do not find any evidence worth the name to grant the relief prayed for by the Complaint.
 - The complaint is accordingly dismissed.
 JUSTICE GHANSHYAM DASS, Presiding Officer.

नई दिस्ली, 17 **जुलाई**, 2007

कर आ. 2144.—श्रीक्रीगक विकार ऑक्सिक्स, 1947 (1947 का 14) की क्षात 17 के अनुसरण में, केन्द्रीय सरकार सी.एस.पी.डी. आई आर आई. के प्रवंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्देश्चर औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, मुक्तेश्वर के पंचाद (संदर्ग संख्या 120/2001) को अकारित करती है, जो केन्द्रीय सरकार को 17-7-2007 को प्राप्त हुआ था।

> [सं एल-22012/264/1993-आई.आर.(सो-🛮)] अन्य कुमार गाँव, बेस्क अधिकारी

New Delhi, the 17th July, 2007

8.0. 2144.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 120/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar, as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of CMPDIR1 and their workman, which was received by the Central Government on 17-7-2007.

[No. L-22012/264/1993-IR (C-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL, TRIBUNAL-CUM-LABOUR COURT, BIJUBANESWAR

PRESENT:

Shri N. K. R. Mohapatra, Presiding Officer, C.G.L.T. -cum-Lahour Court, Bhubaneswar.

Tr. Industrial Dispute Case No. 129/2001

Date of Passing Award—26th June, 2007

RETWIND

The Management of the Regional Director, CMPDIRI, VII, 4th & 7th Floor, Graha Nirman Bhawan, Sachivalaya Marg, Bhubaneswar.

... 1st Party-Management

And

Their Workmen, represented through the Branch Secretary & C.C. Member, NCOEA, Co. CMPDIR IVII, Gruha Nirman Bhavan, Sactrivalaya Marg, Bhubaneswar.

....2nd Party-Union.

APPEARANCES

M/s. Somedarsan Mohanty, ; Advocate.

For the 1st Party-Management.

M/s. R.K. Bose,

For the 2nd Party-

Advocate

Union

AWARD

The Government of India in the Ministry of Labour, in exercise of Powers conferred by Clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Dispute Act, 1947 (14 of 1947) have referred the following dispute for adjudication vide their Order No. L-22012/264/93-TR (C-II), dated 30-4-1997:—

"Whether the action of the Munagement of Central Mines Planning & Design Institute Limited (CMPDIL) in not regularizing the services of Shri Gokul Ghadei, Ganesh Chandra Naik, Purna Chandra Ghadei and Madhab Naik, casual workmen is legal and justified? If not, to what relief are the workmen entitled and from which date?"

The abortly stated case of the Union as narrated in the Statement of Claim is as follows:—

The Management of C.M.P.D.I-RI-VII, (hereinafter called as Management) come into being at Bhubaneswar in August 1987 as a subsidiary company of the Coal India. Ltd. to act as an in house consultant to the department of Coal. Initially the said Management started functioning in a private rented building and thereafter it shifted in 1988 to 4th, 5th, 6th and 7th Floor of a building of Orissa State: Housing Board on lease basis. The total carpet area of these floors being about 20,000 Sq. (t. it engaged the disputants as Sweepers and after the sweeping work is over utilized their services in other minial works giving them an assurance that they would be regularized in due course of time. As they were paid considerably low wages much below the salary of a regular awacpes, these workmen made several representations in their individual capacity. as also through the Union in question demanding regularization of their services. About four years after their engagement the Management having succumbed to the demand of the Union issued a letter on 31-3-1992 appointing. these workmen as casual sweepers for a period of 90 days only with affect from 1-4-1992 on a consolidated wage of Rs. 75/- per day and thereafter having terminated them on expiry of the term again engaged them as before paying a pality amount. As the work performed by these workmen was perennial in nature and they were being continuously. engaged without regularization ever since the establishment of the Management, the Union raised an Industrial Dispute. The Government of India initially did not like to refer the matter to the Tribunal, but persuant to a direction of the Hon'ble High Court in O.J.C. 761/94 it subsequently refizzed. the matter. Hence this reference.

3. The Management on the other hand has averred that office sweeping work being of 2 to 3 hours job, one Gokul Ghadei (one of the disputant-workman) was engaged as a part time sweeper when the office-establishment of the Management first came into being in 1987. The said Gokul Ghadei for his own purpose engaged three others (meaning the other disputants) for (intely cleaning of the

office floor. After the office was shifted to 4th to 7th Ploor. of a building of State Housing Board (present building) in 1998 the self same Gokul was asked to sweep the floor on part time basis with his workers. While this practice was going on Gokul Ghader and two of his associates namely Purna Chadei and Madhab Naik were appointed as casual. sweeper for 90 days with effect from 1-4-1992 on condition that they would be terminated on completion of the said term unless extended further. As in the meantime the Coal. India Limited, the apex body, imposed restriction on appointment of regular and temporary/casual employees. further extension to these workers could not be given after. expiry of 90 days. However the work of sweeping was again. given on contrictual basis to a self styled farm M/s. Gokul & Brothers rue by the disputants. When the management issued a short tender notice calling upon interested bidders. to take up the sweeping and upkeep work on contract basis, these disputants preferred O.J.C. 961/94 challenging the tender notice. The Hon'ble Coun in their order dated 9-8-96 directed betther continuance of these disputants until the disposal of the reference and as such they are continuing till date. In the above back ground it is contended by the Management that the above engagement of the disputant being partially part-time, partially casual. and then contractual and then High Court order oriented they are not exititled to claim regularization, their casual. appointment from 1-4-1992 onwards and prior to that not having been made in accordance with the recruitment

 On the basis of above pleadings of the parties the following three issues were framed.

ESSUES

- 1. Whether the Industrial Dispute is maintainable?
- 2. Whether the workmen are entitled to any order of regularization?
- 3. To what other relief, if any?
- 5. The Union has examined its Branch Secretary as its sole witness while the Management has examined two of its officers. Both parties have also filed a good number of documents in suppost of their respective stands.

ISSUE NO. 1

 This issue is answered affirmatively there being no substantial challenge to the same by either party.

ISSUE NO. 2 & 3

7 These issues being inter-related are taken up jointly

The Union has produced as many as 37 documents marked as Ext.-1 to 37. These includes correspondences, office orders, memorandum of settlements, short-tender notice issued by the Management, copy of payment

voucher, judgement of the Hon'ble High Court in O.J.C. 761/94 etc.

- 8. The Management has also produced equal number of documents marked as Ext.-A to Wand AA to HH and X and XII. These documents include correspondence with the higher authorities, representation of the disputants, copy of the office notes, appointment letters issued to three of the workmen for a period of 90 days, joining report of these disputants, Attendance register, vouchers granted by workman Gokul, quotation given by M/s. Gokul Chadei & Brothers etc.
- It may be stated at the very outset that except the oral evidence of W.W.I no document has been filed by the Union as to under what conditions these disputants were first engaged when the establishment of the Management came into being admittedly for the first time in 1987. From a letter of the Management (Ext.-1) addressed to its higher. authority it appears that disputant Gokul Ghadei was alone. engaged first on part time basis as he was found working on self same basis in another neighbouring establishment of one S.E.C.L. and to manage his entire work the said Gokul in turn had engaged the other three disputants to sweep the office floors of the Management, Later when the of face of the Management was shifted to the present build. ing the Management diverted one such worker to attend their rest house situated in a different place asking Cokul-Chader alone to sweep the floors of the 4th to 7th Floor of the office building to which it was shifted. The said Gokul used to clean the floor along with two other persons namely Funta Chandra Chadei and Madhab Naik (other two disputants) on a fixed sum settled on bargain. The said Gokul used to take his dues at the end of the month through youthers. The documents produced by the parties show that Shri Gokul used to receive his fees @ Rs. 15 per day per person when the minimum wage fixed by the State Govt. was something more than that suggesting that the workman Gokul was simply given a part time job of two to three hours for cleaning the floors alone. In his evidence the Branch Secretary of the Union (W.W.I) has claimed that ail. these four workmen of whom three were engaged in the of free building and another in the rest house, were working from 6 A.M. to 2 P.M. daily as they were engaged on other duties after the sweeping work was over. But to substantiate the same no documents worth the name has been produced our any of the disputants have been examined to thenw sufficient light as to how they were kept engaged from 6 A.M. to 2 P.M. On the other hand the office notes marked as Ext.-B shows that time and again the sweeping. charges payable to Gokul was enhanced on his own representation and it were received by Gokul himself on behalf of his self styled firm M/s. Cokul & Brothers. This he used to receive until himself and disputant Puma and Madhab were given appointments as easkal sweepers for 90 days. from 3-4-1992 vide Ext.-F. G and H suggesting that their previous engagement was on part time basis as claimed by the Management.

 It is contended by the Union Witness (W.W.-1). that as per Clause 11.5 of the National Coal Wage Agreement-IV (Ext.-27) no employer is permitted to engage contractors on Jobs of permanent and percumial in nature. Sweeping business being a work of above nature the past engagement of workman prior to their 90 days appointment as casual workers is to be taken into account while considering their case for regularization. In this regard it may be pointed out that no doubt under the above agreement the Management is prevented from engaging contractors or labourers through contractors on job of permanent and perennial nature. But such restrictions of not engaging contractors are only applicable to those type of work which needs to be attended continuously in a cyclic manner round the clock. The work of sweeping may be permanent but it cannot be said perennial unless it is shown that such sweeping activities are needed through out the entire working hours, in other words a distinction can be drawn between the duty of a Sweeper engaged in a mining area and the duty performed by a sweeper in an office building. In the former case sweeping business may be both percential and permanent but in the latter case the sweeping of office floor can only be considered as permanent but not both permanent and peremial.

 In the instance case there is evidence on record. that besides having its office located in a reated multistoried. building the Management had taken another house on rent in another place to provide accommodation to those of the junior officers who did not intend to have separate houses. Except these two building it had no other residential quarters or other places requiring sweeping and cleaning in a permanent and perennial basis. From a letter of the Management (Ext.-1) which has been marked from the side of the Union it appears that of the four disputants one was asked to attend the building meant for Junior Officer's accommodation while the remaining three were sweeping the office building in question being engaged by workman Gokul. As normally sweeping work is to be completed before office hours, it squarely suggests that the disputants could not have been engaged for eight hours a day. Since the concerned workman have not come forward to depose before the Court and as their witness (W.W.-1) has failed to account for as to what other work besides sweeping was entrusted to these disputants to keep them engaged up till 2.00 P.M everyday, it can safely be concluded that these disputants were engaged on part-time basis as claimed by the Management prior to their appointment as casual sweepers with effect from 1.4,1992. This has gained support from the narration of Ext.-1 which indicates that while these disputants were working on part time basis in a nearby establishment they were contacted and engaged alike wise when the establishment of the Management came. first into being in 1987. The evidence of the Management witness read with the narration of Ext. 1 and other documents make it further clear that the part-time job of

sweeping was entrusted to the disputant, Gokul Ghadei alone but he used to take the assistance of other disputants to clean the office fluors when he was contacted first in 1987. The evidence of the Management Witness further indicates that these persons by devoting two to three hour daily use to sweep the office building in question before the office hour and for this Gokul Ghadei used to receive the entire dues in the name of Gokul & Brothers. Therefore in these premises the work done by these disputants cannot be considered as one of permenent as well as perennial in nature so as to attract the provisions of the National Coal Wage Agreement - IV.

It is on record (Ext.-2) that while the workmen were working in the above manner, the Union raised a demand in its letter dated 10.1.1992 for regularization of these disputants, Over this issue the Dy. Chief Manager stationed at Ranchi called for reports from the Management and in a later stage three of the disputants namely Gokul Ghadei, Puma Chandra Ghadei and Madhab Naik were given temporary appointment for 90 days with effect from 1.4.1992 on condition that their engagement was terminable on expiry of such period unless extended further. The documentary evidence produced by both parties shows that after termination of these disputant on expiry of the above term, the Union came up heavily demanding their regularization, which resulted in various meetings between the Management and the Union but to no effect. In the regantime the Management also asked for leave of higher authority to give them further engagement and at the same time invited applications through Employment Exchange for filling up two posts that were sanctioned later. But in view of the recruitment restrictions imposed by the Coal India Ltd. these posts could not be filled up. The record indicates that after the above termination in July 1992 workman Gokul having agreed to work as before gave a proposal on behalf of M/s. Goltul &. Brothers to work on an agreed rate of Rs. 80 per day each (three persons) vide Ext.-9 dated 1-8-1992 and took up the work. While this being the position the Management on 8-5-1996 issued a short tender notice calling interested hidders to take up general up-keep work on contract basis. In the meanwhile the Central Government did not like to refer to the Tribunal the dispute which the Union had raised before the Labour Enforcing Authority. This order having been challenged in O.J.C. 761/94 the Hon ble Court in their order dated 9.8.96 directed the Central Government to refer the matter to Tribunal. At the same time it directed the Management not to take any step to disengage all the four disputants until the reference is answered.

13. From the above it is thus clear that while the three workmen Gokul. Puma and Madhab were working as sweepers of the office building on part time basis they were appointed as casual aweepers for 90 days on stipulation that their engagement would be terminable on expiry of 90 days unless it is extended. It is here argued by the

Union that under the Standing Order casual engagement for 90 or more than 90 days entails a person to claim regularization. On the other hand it was argued by the Management that these persons having not been recruited/ selected as per the recruitment process of the company and their 90 days engagement, being as casual worker, they have got no right to claim regularization as per the mandate of the Apex Court given in several rulings. It was further contended that it is outside the purview of the Court/ Tribunal to pass an order for regularization of any particular workers.

It as no doubt true that a casual employee or daily. wagers not belegied as per the recruitment rule has got no right to claim regularization. It is equally true that the hands of the Tribunal are tight to pass any order directing regularization of any such workers. But if the Standing Order of an industry (contains a provision for regularization of such workers, in my opinion, the same would prevail all over. The Standing Order of the Management a portion of which has been marked as Ext.-26 shows the classification of different workers. According to it a casual workman means a workman who has been engaged for work which is: intermittendor sporadic or of casual nature not extending beyond a maximum period of three months at a time he evidence of the Management Witness shows that the above named three disputants were appointed as casual worker for alperiod of 90 days with effect from 1.4.1992 and they were terminated on 30th July, 1992. This shows that they were not terminated after 90 days but were allowed so continue beyond 90 days. The full text of the Standing Order has of course not been filled by either party so as to enable the Chart to examine the real status of casual worker. But the letter of the Central Mine Planning & Design. Institute Lighted (Ext.-W) indicates that persons engaged as casual workers for more than 90 days acquire a right to claim regularization. It is on record that even while the three working were working as causal employees the Management had moved its higher authority for further extension of the term of these three workmen beyond 90. days. It is also on record that after sanction of some permanent posts of sweeper an advertisement was made asking. the Local Employment Authority to sponsor the name of suitable candidates and at the same time these three disputants were asked to get their names sponsored through employment exchange. The said recruitment examination. could not of course be held due to recruitment banimposed by the Coal India Authority. But none the less the other correspondence of the Management shows that it was equally interested to provide regular services to these three workspen. The most vital and disquieting aspect of the case as appearing from the evidence is that though these three workmen were given appointment as - casual. employees for a period of 90 days with effect from 1.4.1992. they have been terminated in the month of July 1992 i.e. much after 90 days without further extension. This itself makes the workmen (three in number) entitled to claim regularization as per the Standing Order of the Management.

- 15. It was argued by the Management that the 90. days contractual engagement of the above disputants hot being in accordance with the recruitment procedure they were not entitled for regularization. Be it noted here that when the Management has allowed these workers to continue as casual employees, for whatever reasons it may be, beyond the contractual period of 90 days, they cannot be denied regularization in violation of the Standing Order. The Tribunal no doubt is capsized with its power to direct. regularization but a direction to the Management to regularize the disputants namely Gokul, Puma and Madhab. would not be bad in the face of a statutory protective clause. given under the Standing Order. But in so far as the case of the 4th disputant Shri Ganesh Ch. Naik is concerned except a thin line of evidence of the Union that he was also working continuously like other three, there is not a scrapof paper to show that like the other three he was also given. a contractual appointment as casual workers for a period of 90 days and above. Therefore in these circumstances he declared not entitle for any relief.
- 16. Thus to sum up, the Management is directed to regularize the services of the workman Gokul, Puma and Madhab in accordance with its Standing Order within six months from the date of receipt of the order and subject to the reservation norms. They would ofcourse not be entitled for any back wages and other benefits except continuity of service from 1-4-1992.
 - 17. Accordingly the reference is answered.

N. K. R. MOHAPATRA, Presiding Officer

List of witnesses examined on behalf of the workmen

Workman Witness No. 1- Shri Bijaya Bihari Padhi.

List of witnesses examined on behalf of the Management

Management Witness No.1 - Mohammed Yusuf Anwar, Management Witness No.2 - Birendra Prasad Singh

List of exhibits on behalf of the 2nd pacty-workman

Ext.-1 - Copy of letter dated 21-1-92.

Ext.-2 - Copy of letter dated 27/28-1-92.

Ext.-3 - Copy of letter dated 14-2-92.

Ext.-4 - Copy of letter dated 1-7-92.

Ext.-5 - Copy of note dated 21-7-92.

Ext.-6 - Copy of letter duted 19-8-92.

Ext.-7 - Copy of lener dated 26-8-92.

- Ext.-8 Copy of letter dated 20-11-92 (Two Shoets)
- Ext.-9 Copy of letter dated 29-8-92.
- Ext-10 Copy of bill dated 12-11-98.
- Ext.-11 Copy of bill dates 9-12-98.
- Ext-12-Letter dated 21-9-92.
- Fxt.-13. Copy of Transfer Certificate dated 25-10-88.
- Ext.-14 Copy of Caste Certificate issued in Misc. Case No. 406/82.
- Ext.-15 Copy of Transfer Certificate dated 18-4-91.
- Ext.-16 Copy of Caste Certificate issued in Misc. Case No. 1507/01
- Ext. -17 Copy of Transfer Certificate dated 11-11-88.
- Ext-18 Copy of Caste Certificate in Misc. Case No. 1186/ 88.
- Faxt.-19 Copy of the letter No. 7467 dated 19/24-2-93 regarding regularization of Shri G.C. Nayak and Others.
- EAt. -20 Copy of the letter dated 14-8-92 regarding sanction for engagement of casual sweepers.
- Ext.-21- Copy of the certified letter dated 27-8-92 regarding engagement of sweepers.
- Ext.-22 Copy of the charter of demands dated 17.8.92.
- Ext.-23 Copy of the letter dated 16.12.92 of the Association for discussion on the Issues.
- Ext.-24 Copy of the minutes of the meeting held on 9-2-93.
- Ext.-25 Copy of the minutes of the meeting held on 30-7-93.
- Ext. 26 Copy of the Standing Order (6 sheets).
- Ext.-27 Copy of the memorandum of agreement dated 27-7-89 (5 pages).
- Ext. 28 Copy of the letter dated 10-12-92 sent to the Asst. Labour Commissioner.
- Ext. 29 Copy of notice dated 22-12-92 asking for furnishing comments in the dispute.
- Ext.-30 Copy of comments furnished in the dispute.
- Ext.31 Copy of minutes of discussion held on 11-2-93.
- Ext -32 Copy of Memorandum of Settlement dated 24-6-91.
- Ext. -33 Copy of Short Tender Notice dated 8-5-96.
- Ext. -34. Copies of Vouchers (4 sheets).
- Ext.-35 Copy of the order dated 30-3-93 passed by the Industrial Court, Nagpur.

- Ext.-36 Copy of the notification dated 9-12-76.
- Ext.-37 Copy of the order dated 9.8.96 in O.J.C. No. 761/94 (11 sheets).

List of Exhibits on Behalf of the 1st Party Management:

- Ext.- A- Copy of letter dated 10-1-90.
- Ext,-B Copy of note dated 10-1-90.
- Est.-C Copy of note dated 11-1-91.
- Ext.-D Copy of note dated 21-3-92.
- Ext.-E Copy of letter dated 30-3-92.
- Ext.-F Copy of letter dated 31-3-92.
- Fixt.-G Copy of letter dated 31-3-92.
- Ext.-H Copy of letter dated 31-3-92.
- Fxt.-I Joining report dated 1-4-92.
- Ext.-M Caste Certificate dated 29-12-92.
- Fixt.-1/2 Identity Card dated 26-4-91.
- Ext.-K Joining Report dated 1-4-92.
- Ext.-K/I Caste Certificate dated 12-9-91.
- Ext-K/2 Identity Card.
- Ext.-1. Joining Report.
- Fxt-L/I Caste Certificate dated 29-12-88
- Ext.-M Copy of extract of attendance register.
- Ext.-N Copy of note dated 1-7-92.
- Ext.-O Copy of letter dated July 1992.
- Ext.-P Copy of letter dated 31-7-92
- Ext.-Q Copy of letter dated 1-8-92.
- Ext.-R Copy of letter dated 5-8-92.
- Ext.-S Copy of letter dated 28-8-92.
- Ext.-T Copy of quotation dated 29-8-92.
- Ext.-U Copy of note sheet dated 2-9-92.
- Ext.-V Copy of letter dated 7-9-92.
- Ext.-W Copy of letter dated 16-9-92.
- Ext.-AA Copy of note sheet dated 24-9-92.
- Ext.-BB Copy of letter dated 29-10-92.
- Ext-CC Copy of note sheet dated 23-11-92.
- Ext. DiD · Copy of letter dated 24-11-92.
- Ext.-FB Copy of letter dated 14-12-92.
- Ext.-FF Copy of bill dated 1-3-93.
- Ext.-OG Copy of letter dated 31-3-93.
- Eat.-HH Copy of bill dated 2-3-94.
- "X"- Copy of Letter No. 793, dated 5-12-2002, 16/18-7-98 of CMPDI (Sr. PO)
- "X/T" Copy of reply dated 25-7-98 of Gogu I Ghadei to Sr. PO, CMPDI.

नई दिल्ली, 17 जुलाई, 2007

का.आ. 2145.—औदांशिक विवाद अधिनियम, 1947 (1947 का 14) की धारः 17 के अनुसरण में, केन्द्रीय सरकार तारापुर एटींधिक परितर स्टेशन के प्रबंधतंत्र के संबद्ध नियोक्कों और उनके कर्मकारों के बीच, अनुष्य में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं.-2, मुम्बई के पंचाट (संदर्भ संख्या CGIT-2/37 of 2004) को प्रकाशित करती है, भी केन्द्रीय सरकार को 17-7-2007 को प्राप्त हुआ था।

[सं. एल ४२०६२/२५२८२२ आई आर (सीएम-३६)] अनय कुमर गौड, डेस्क अधिकारी

New Delhi, the 17th July, 2007.

S.O. 2145.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT 2/37 of 2004) of the Central Government Industrial Tribunal-com Labour Court. No. 2, Mumbai as shown in the Annexure in the Industrial Dispute between the managemental Tarapur Atomomic Power Station, and their workmen, received by the Central Government on 17-7-2007.

[No. L-42012/292/2003-IR (CM-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

REFORE THE CENTRAL GOVERNMENT D'DUSTRIAL TRIBUNAL NO. II, MUMBAI

PRESENT: A.A. Lad, Presiding Officer

Reference No. CGIT-2/37 of 2004

First players in relation to the Management of Tarapus Atomic Power Station

The General Manager (P & IR) The apur Atomic, Fower Station PC Tripp Distr. Thank Thane-4045 M.

AND

Pager Wagamen Shri Rajendes R. More At. Poptarer PO Dhagai Tajuka Paigager Distr. Thane

APPEARANCES

Forthe Employer

M/s. Rajesh Kothari & Co. Advocates For the Workman

Mr. V. J. Amberkar Advocate

Mumbai, dated 15th June, 2007.

AWARD

The Government of India, Ministry of Labour, by its order No.1. 42012/292/2003/IR (CM-II)/dated 18-8-2004 in exercise of the powers conferred by clause (d) of subsection (1) and sub-section 2(A) of Section 10 of the Industrial Dispute Act, 1947 have referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of Tarapur Atomic Power Station, District Thane in dismissing the services of Mr. Rajendra R. More, Helper with effect from 8-6-1996 is legal and justified? If not, to what relief the workman is entitled?"

- 2. Claim Statement is filted at Ex-8 by workman stating that he was employed by first party as a Helper since 1991 as per the letter issued. Said employment was with first party upto 4-4-91. Thereafter he was regularised in the employment as per demand of the Union as a daily rated employee from 5.4-1991 till 8.6.95.
- 3. On 14-8-95 he was given pay scale of Rs. 750-42-870-14-940. Thereafter he was terminated on 8-3-96 giving effect from 8-6-96 without any notice and any reason. By letter dated 20-4-2003 he questioned the said action and requested to regularise him in the employment.
- 4. He states that, he was arrested by Police on Jalse complaint given by one lady. Actually he was not concerned with that lady who leveled false charge of misconduct against him. Only because second party arrested and charge sheeted by police and without holding enquiry and without giving opportunity to explain upon the said, he was terminated though he was acquitted from the said complaint by the Session Judge. Palghar, So be prayed that, action taken by first party dated 8-3-96 be quashed and set aside with direction to first party to reinstate him in the employment with continuity of service.
- 5 This is objected by first party by filing repty at his 11 stating that, he was appointed on probation on 8-3-96 and during the probation period he was terminated. He kept silent for about six years and prayed for reinstatement though he got acquirted from the Session Court regarding criminal case pending, initially he was taken as a casual worker and worked from 1983 to 1994 for number of days as mentioned in para 3 of Written Statement. Then he was selected and appointed on probation. During the probation his work found unsatisfactory so he was terminated. Moreover termination dated 8-6-96 was challenged by him in 2002 by application with ALC (C). No explanation was given as to why he was late in approaching Conciliation Officer. So on all these counts, claim made by second party deserve to be reject.

6. In view of above pleadings issues were framed at Ex-16 which are answered as follows:

TSSUES FINDINGS

Is termination justifiable? No.

Is he entitled for reinstatement? Yes, but

without hackwages.

What Order? As per order below.

REASONS

Issue no,] ;--

- 7. Termination dated 8-6-96 is challenged by second party alleging that, without following due process of law and without hearing him by giving charge sheet and by holding enquiry, he was terminated said decision of the first party is illegal. Whereas case of the first party is that, since he was appointed on probation and his work found unsatisfactory he was terminated in probation period for which enquiry does not require or any explanation from the work man.
- First party place reliance on the citation published. in 2003 (III) SCC page 263 where it is observed that, if employee terminated during probation period, on unsatisfactory performance, does not attract any stigma. Here this case is on the point of stigms on the employment. of the concerned workman but here second party who is involved in the reference was terminated. As per Industrial Disputes Act it is not justifiable and it is not even observed. in that angle in the said observations. Same view is taken in the citation published in SCC (I) 520 where it is not clear. whether probationer can be terminated in Industrial Disputes Act without giving opportunity to hear the employee on the charges. Citation published in 2000 (v) SCC 152 observed that probationer has no right to be reinstated on the same post again. In the said case provision of Industrial Disputes Act are not discussed and observed does not require any enquiry while terminating employee. who is on probation. Against that citation produced by second party published in 1970 H LLI page 454 SC reveals. that, resmination of the employee who is in probation if done without show cause and holding enquiry it is observed that, it is not just and legal. It is further observed. that, if such a termination is challenged before Tribonal by employee who was on probation without holding enquiry and without hearing him in that case, Tribunal can consider the varidity of order of termination and can see whether any reason is assigned in terminating the employment. So, ratio led by Apex Court while deciding case of Brokebond. V/s l.K.Gautam supra observed that, when employee is on. probation does not give blanket right to the employer to

terminate the employee during probation without holding an enquiry.

Admittedly there was no chargesheet and no enquiry. Admittedly no explanation was sought from second party for what he was terminated and what was in the mind of first party in terminating the second party. It appear that on the basis of arrest in Session Case pending against him in 'Palghar Court' he was terminated. The case of the second party is that he was acquitted by Palghar Session Court and that fact is not disputed by first party. So this reveals that, on the so called complaint first party act upon and decided to terminate his employment which is not just and proper. What ever may be in the mind of first party about second party, it must convey it to him and sought explanation and thereafter can take action. But here no opportunity of that type appears given and simply first party safely rely on the prosecution of the second party. and decided to terminate during his probation observing his work was not satisfactory. Moreover nothing is stated about his work. No specific event is mentioned by which it can be observed that work of second party was not satisfactory. No any case is projected except so called criminal case and reason behind his termination. So all these reveals that, first party took, law in its hand and decided to terminate his employment which is not just and legal. It is noted that, this employee is protected by provision of Industrial Disputes Act. His services are governed by the provision of Industrial Disputes Act. In this scenario the action taken by first party if considered, one will have to conclude that, it was not legal and just. So, I observe that, termination is not justifulable as well as legal one.

Issue nos. 2 & 3:-

- 10. Second party claim reinstatement with continuity of service. First party challenge it saying that, he approached after 6 years from termination which is not just and legal.
- 11. The case made out by second party that, his criminal case was decided on merit on 8-4-2002 whereas he was terminated on 8-6-96. Besides reason of termination is a prosecution going on against second party in Palghar Sessions Court. So definitely when second party got a clean thit about his so called charges, it might inspire him to approach for employment in which in my considered view it is not unjust or against the common sense of the common man. When he go clean chit from the Court on 8-4-2002 which is not disputed and challenged by first party, definitely be might have considered about his employment and accordingly he approached Tribunal. So in my considered view delay caused is explained by second party saying that he was acquitted on 8-4-2002. So his approach in 2002 against the termination of 1996 is justified.
- It is matter of record that, he did not work with first party from 8-6-96. First party is a Research Institution

'which is dealing with nuclear power. It is a public body run in the interest of public. When second party did not work for first party from 1996 in my considered view, he is not entitled for backwages.

13. As observed above, decision taken by first party of termination without enquiry and without issuing charge sheet is not just and legal. Moreover the so called charges levelled against him were discharged by the competent court. So all that permits second party to claim employment with first party but with no other ancillary benefits. Accordingly I answer above issues and passes the following order:

ORDER

- Reference is partly allowed.
- First party directed to reinstate second party Shri Rajendra, R. More as Helper within three months from the order of this Tribunal and go on paying birn his wages on the basis of his last pay drawn when terminated.
- 3. Prayer of second party to give continuity in service and other ancillary benefits like backwages are rejected.

Date: 15:06-2007 A. A. LAD, Presiding Officer

नई दिल्लो, 1**7 जुलाई, 200**7

का.आ. 2146.— औद्योगिक विकर अधिनियम, 1947 (1947) कर 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार है. सी. एल. के प्रवंधतंत्र के संबद्ध नियोवकों और उनके कर्मकारों के बीब, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण आस्त्रसोल के पंचाट (संदर्भ संख्या 58/2005) की प्रकाशित करती है, जो केन्द्रीय सरकार को 17-7-2007 को प्राप्त हुआ था।

[सं. एल 22012/355/2(XM - आई आर (सोएम-11)] अलब क्यार गौड, डेस्क अधिकारी

New Delhi, the 17th July, 2007.

S.O. 2146.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 58/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure in the Industrial Dispute between the management of M/s. Eastern Coalfields Limited, and their workmen, received by the Central Government on 17-7-2007.

(No. U. 22012/355/2004-IR (CM-II)] AJAY KUMAR GAUR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-IL, ASANSOL

PRESENT

Sri Md. Sarfaraz Khan, Presiding Officer

Reference No. 58 of 2005

Parties: The Agent, J.K. Nagar Colhery of E.C.L. Bidhanbag, Burdwan

 Vr_3

The General Secretary, Knyala Mazdoor Congress, Asansol, Bardwan

REPRESENTATIVES

For the management

. Sri P.D. Das, Advocates

For the union (Workman) : Sri S.K. Pandey, General

Sri S.K. Pandey, General Secretary, Koyala Mazdoor

Congress, Asansol.

Industry : Coal State : West Bengal

Dated the 24-11-2006

AWARD

In exercise of powers conferred by clause (d) of Subsection (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) Government of India through the Ministry of Labour vide its letter No. L-12012/355/2004-IR (CM-II)| dated 21-7-2005 has been pleased to refer the following dispute for adjudication by this Tribusal.

SCHEDULE.

"Whether the amon of the management of J.K. Nagar Cottiery under Satgram Area of M/s. ECL in dismissing Sri Babui Majhi, Electric Helper from service w.e.f. 29-12-1992 is legal and justified? If not, to what relief the workman is entitled and from which date?"

After having received the Order No. 22012/355/2004-IR(CM-II) dated 21-07-2005 of the aforesaid reference from the Govt. of India, Ministry of Labour, New Delhi, for adjudication a reference case Nn. 58 of 2005 was registered on 17-08-05 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were issued to the parties concerned. Sri P.K.Das, Advocate and Sri S.K.Pandey, General Secretary of the union appeared in the Court along with a letter of authority to represent the numagement and the union was filed but in spite of several adjournments and direction no written statement was filed on behalf of the management and ultimately the case was fixed for final hearing.

- In brief compass the case of the union as set forth in its written statement is that Sh. Habui Majhi, was a permanent employee of the company as Flectric Helper at J.K.Nagar Colliery under Satgram Area of M/s. Eastern Coaffields Limited. The main case of the union is that the delinquent employee absented from his duty w.c.f. 23-6-1992 to 14-8-1992 due to his sickness for which be was charge sheeted vide charge sheet No. ECL/IKN/PER/ 92/4285 dated 14/17-8-92. After being declared fit the workman concerned reported to the management for resumption of his duty but he was not allowed. It is also the case. of the union that the workman concerned replied to the charge sheet and appeared before the enquiry of ficer and submitted his sick certificate etc. for the perusal of the enquiry officer but surprisingly exough the workman was dismissed from the service of the company on 29-12-1992. by the General Manager, Sargram Area. The workman along with his union tried their level best to pursue the management for his reinstatement but to no effect and his assue was kept pending for years together without any decision.
- 3. It is also the claim of the union that the delinquent employee is sitting idle without any job from the date of dismissal and his whole family is on the verge of starvarion. The dismissal of the workman concerned from the service of the company is claimed to be illegal and unjustified. The union has sought a relief for the reinstatement of the workman concerned on the service after setting aside the order of the dismissal passed by the management together with the payment of the full back wages and al: the consequential benefit.
- 4. From the perusal of the order sheets of the record it transpires that right from the date 14-10-05 to 15-9-06 several adjournments and direction by way of last chance for filling the written statement were given to the management but to no effect and ultimately the case was fixed for

final hearing. It is further clear from the record that some Xerox copies of the documents have been filed by the side of the union in support of its claim. The copy of the charge sheet, enquiry proceedings, enquiry report, reedical certificate, dismissal order and copies of representation dated 18-8-1993 and 18-6-98 archressed to the G.M., Satgram Area have been filed in the court.

- Keeping in view of the pleadings of the union and the material available in the record I find certain facts which are admitted one.
- 6. It is the admitted fact that the workman concerned Sh. Babui Majhi was in the employment of the company as Electric Helper at J.K. Nagar Colliery under Satgram Area of M/s. Eastern Coalfields Limited. It is also admitted that the delinquent employee was absent from his duty w.c.f. 23-6-92 to 17-8-92 without any leave or prior permission and without any information to the management and accordingly be was charge sheeted for his unauthorized absence from duty.
- 7. It is also directly or indirectly admitted case that the workman concerned never reported before the colliery management during the entire period of absence nor any written intimation stating the reason of his absence was submitted by the delinquent employee to the management.
- 8. It is obvious from the record, enquiry proceeding, and its finding that Sri Bhailal Hela and Bansrupon Chowdhury the management representative were examined before the linquiry Officer who has categorically supported the fact that the delinquent employee was absent during the relevant period without information/authorized leave which is admitted by Babui Majhi, the workman concerned in his statement before the enquiry officer.
- 9. Having gone through the entire facts, circumstance, enquiry proceeding and its findings I am satisfied to hold that the workman concerned was admittedly absent from his duty during the relevant period continuously without any sanctioned leave, prior permission or information to the management. The Enquiry Officer has rightly held him guilty for the alleged charge of unauthorized absence w.c.f. 23-6-92 to 17-8-92 and in view of the prevailing facts the delinquent employee deserves some suitable punishment for the alleged proven misconduct as per the prevision of the Model Standing Order applicable to the establishment.
- 10. Now the only main point in issue for consideration before the court is to set as to how far the punishment of dismissal awarded to the workman concerned by

the displinary authority is just, proper and proportionate to the alleged proven nature of misconduct.

It. Heard both the parties on the points in issue. It was submitted by the union that it is a simple case of an unauthorized absence for about two months only and the absence from the duty during the relevant period is duly explained and the reasons of absence supported with near ment papers and medical certificate is relevant and satisfactory. The enquiry officer has also not whispered even a word that the reason of anauthorized absence was without any satisfactory reasons.

13. It was further submitted that the workman concerned has got unblemish record during the service tenure and there has not been any complain of any misconduct against the workman concerned. The management has also not been able to prove the charges of habitual absenteetism and no chit of paper in this regard has been filed in the court. So it can be easily concluded that it is the first offence of the workman which has been sufficiently explained and supported by the medical certificate indicating the compelling circumstance beyond the control of the workman.

13. In course of argument it was also submined that a simple case of unauthorized absence for about two months can not be said to be a gross misconduct and in this context the attention of the court was drawn towards the provision of the Model Standing Order where the extreme purplishment prescribed is dismissal as per the gravity of the misconduct and it was claimed that the extreme penalty can not be imposed upon the workman in such a minor case of alleged proven misconduct of as granthorized absence. The submission of the union has got much force and reasonably convincing.

14. It has been several times clearly observed by different Hon'ble High Courts and the Apex Court as well that before imposing a punishment of dismissal it is necessary for the disciplinary authority to consider socioeconomic back ground of the workman, his family back ground, length of service put in by the employee, his pass records and other surrounding circumstances including the nature of misconduct and lastly the compelling circumstance to commit the misconduct. These are the relevant factors which must have to be kept in mind by the authority as the time of imposing the punishment which of course has not been done by the authority in this case.

15. No doubt the workman concerned is an illiterate man of the weaker section of the society who is admittedly financially weak and poor who has suffered a lot for more than ten years for a minor misconduct of anauthorized.

absence for about two months under the compelling circumstance beyond his control. It is clear that there is no charge of habitual absenteeism proved against him and it is the first offence. Besides this the workman has got unblemish record as no evidence or document has been produced by the management in this regard. The attention of the court was drawn by the union towards the provision of the Model Standing Order laid down under clause 27(1) (page 15) where various minor punishment have been prescribed to be awarded according to the gravity of the misconduct. I fail to think as to why only maximum punishment available under the said clause should be awarded in the present facts and circumstance of the case. It has been observed by the Apex Court that justice must be tempered with mercy and that the delinquent employee should be given an opportunity to reform himself and to be loyal and disciplinary employee of the management

 However Tany of the view that the punishment of dismussal for an enauthorized absence for about two months under the compelling circumstance and without any malafide intention is not just and proper rather it is too. barsh a gunishment which is totally disproportionate to the alleged proven misconduct, shocking to the judiciaconscience of the court. Besides this as per the directions of the Apex Court no second show cause notice before imposing the punishment of dismissal has been issued to the workman concerned which is the direct violation of the directives of the Apex Court and the principles of natural. justice as well. Such a simple cose should have been dealt. with leniently by the management. In this view of the matter I think it just and proper to modify and substitute the same by exercising the power under Section $B(\mathbf{A})$ of the L.D. Act, 1947 in order to meet the ends of justice and as such the impugned order of dismissal of the concerned workman is hereby set aside and he is directed to be reinstated with the continuity of the service. In the light of the facts, discumstance and the proven misconduct under which the punishment of disharsal was awarded to the workman concerned I think at appropriate that the delinquent workman be imposed a punishment of stoppage of two increments without any cumulative effect. It is further directed that the workman concerned will be entitled to get only 50% of the back wages which will serve the ends of justice. Accordingly it is hereby

ORDERED

that let an" Award" be and the same is passed in favour of the workman concerned. Send the copies of the award to the Gov! of India, Ministry of Labour, New Deth: for information and needful. The reference is accordingly disposed of.

MO. SARIARAZ KHAN, Presiding Officer

नई दिल्ली, 17 जुलाई, 2007

का.आ. २१४७.—औस्रोगिक विवाद अधिनियम, १९४७ (१९४७) का 14) की धारा 17 के अनुसरन में, केन्द्रीय सरकार **परतीय खा**ड़ निरम्प के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीध, अनुर्वंघ में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं.-1, चण्डीगढ़ के पंचाट (संदर्भ संख्या 147/2000) को प्रकाशित अरसी है, जो फोन्द्रीय सरकार की 17-7-2007 को प्राप्त हुआ था।

> [सं. एक-22012/404/1999] आई आर (सी-II)] अजव कुमार गौड़, डेस्क अधिकारी

New Delhi, the 17th July, 2007

S.O. 2147.—In Pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 147/ 2000) of the Central Government Industrial Tribunal cum-Labour Court, No. 1, Chandigark as shown in the Amexure in the Industrial. Dispute between the employers in relation. to the the management of F.C.I and their workmen, which way received by the Central Government on 17-7-2007.

> JNo. 1-22012/404/1999-IR (C-II)] AJAY KUMAR GAUR, Desk Officer ANNEXURE

BEFORE SHRI RAJESH KUMAR, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-L, CHANDIGARH

CASE NO. L.D. 147/2000

Shri Bhadur Singh S/o Sh. Tara Singh Village and P.O. Kathunangal Amritsar (Pb.) ...Applicant

The Distt. Manager, Food Corporation of India, 86, Rani Ka Bagh, Amritsar (Pb.) ...Respondent

APPEARANCES

For the Workman

For the Management

Shri N.K. Zakhmi

AWARD

Passed on 4-7-07

Contral Govt. vide notification No. L-22012/404/99/ IR (CM-II) duted 7-3-2000 has referred the following dispute: to this Tribunal for adjudication.

> "Whether the action of the management of Food Corperation of India. Amritsar in terminating of services of Shri Bahadur Singh S/o Sh. Tara Singh w.e.f. 1-1-1997 without paying him any retrechment compensation is legal and justified? If not, to what relied, the concerned workman is entitled and from

Case repeatedly called None has put up appearance. on behalf of the workman Shri N. K. Zakhmi advocate for the management submitted that workman petitioner has not appeared on this case despite registered notice for today. He submitted that earlier also in the whole year in 2004 and thereafter on 17-4-06 to 24-5-06, 22-8-06, 8-11-06 at 20-12-06, 28-2-07, 24-5-07 and today 4-07-07 none appeared for the workman. It appears the workman is not interested to pursue his case. He is not responding to the registered notices of the court even. It appeares that

workman is gainfully employed some where and not interested to pursue this reference.

In view of the above, since the workman is not. appearing despite registered notice, no purpose will be served in keeping this case pending. Therefore, the present reference is returned for want of prosecution to the Central Govt. File be consigned to record.

Chandigarh

Dated: 4-7-07

RAJESH KUMAR, Presiding Officer

नई दिल्ली, 17 जुलाई, 2007

का,आ, 2148,---औहोगिक विवाद अधिनियम, 1947 (1947 का (4) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केन्द्रीय रेलवे कुला डीक्ल लोकोसड प्रवंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सं. 11 मुम्बई के पंचाट (संदर्भ संक्वा 80/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-7-2007। को फ्राप्त हुआ वा।

> [सं. एल-41011/43/2002-आई आर (ची-1)] अनय कुपार, हेस्क अधिकारी

New Delbi, the 17th July, 2007

S.O. 2148.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 80/ 2003) of the Central Government Industrial Tribunal-cum-Labour Court-II- Mumbei as shown in the Annexure in the Industrial Dispute between the management of Central Railway, Kurla Diesel Locoshed, and their workmen, received by the Central Government on 17-7-2007.

> [No. L-41011/43/2002-IR (B-3)] AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT:

A. A. Lad, Presiding Officer Reference No. CG1T-2/80 of 2003

EMPLOYERS IN RELATION TO THE MANAGEMENT OF CENTRAL RAILWAY, KURLA DIESELLOCOSHED

- The Divisional Mechanical Engineer (D) Central Railway Kural Loco Shed, Kurta Murobai-400024
- The Divisional Railway Manager Central Railway Mumbai Division, Mumbai CST Mumbai-400 001.
- The General Manager Central Railway Mumbai Division, Mumbai CST Mumbai-400001.

AND

Their Workmen

The General Societary Indian Railway Technical Staff Association (C.R) Mahabir Yadav Chawl Nagar Das Road, Andheri (E) Murobai-400 058.

APPEARANCES

For the Employer

Mr. Mandeep Sahni,

Representative

For the Workman

 Mr. A. B. Mishra Representative

Mumbai, dated 12th June, 2007.

AWARD

The Government of India, Ministry of Labour, by its order No. L-41011/43/2002-IR (B-I) dated 25-11-2003 in exercise of die powers conferred by caluse (d) of subsection (1) and sub-section 2(A) of Section 10 of the Industrial Depute Act, 1947 have referred the following dispute to this Tribunal for adjudication:

"Whether the action of the General Manager, Central Railway, Mumbai CST and other officials in imposing the purpshment of reduction of pay from Rs. 10,500 per month to Rs. 6,500 per month for a period of S years with future effect is legal, proper and justified? If not to what relief (including the refund of arrears of payl and recovered Penal Rent and other convequential benefits, etc. along with the promotion to the higher post at par with his juniors) Shri A. N. Pandry, Section Engineer (T & C) Diesel Loco Shed, Kurta is entitled for and from which date add what other directions are necessary in the matter?"

- 2 To support the subject matter referred in the reference, second party place reliance on claim statement. filed at Ex. 13 stating, that, he worked, with frist party as a Section Engineer Battery Section at Diesel Loco Shed at Kurla. He worked for 18 years continuously. During that period aumber of charge sheet were served on him as mentioned in para 2.5 of his claim, statement. On number of occasions charges levelled against him were exonerated in the inquiry. The present reference is pertaining to last charge sheet dated 15-9-98 where he was not found guilty. before Inquiry Officer still management punished him on allegation of subletting Railway Quarters. According to bun tharges levelled against him in charge sheet was of vague nature. Infact Railway Quarter of Byculta was allotted: to him but ecovery was made regarding sub letting of Railway Quager of Mazagaon and at G. T. Nagar from which quarters were not allotted to second party. The case of allegation of sub letting Railway Quarter of Mazagaon is made out but actually Quarter of Byuculla was allotted to the second party. It is not explained as to how Railway. Quarter of bycutta is included in the said, list which is not at all related in the enquiry. Besides Inquiry Officer exonerated charges of subletting Raitway Quarter still, R.S. Rajoria considered evidence observing charges are proved when second party did not accept the other officer given. by R.S. Rajoria to pay Rs. 10,000 to show favour.He complained about R. S. Rajoria to show how he has shown. his bias mind and how be ignored the findings of the Inquiry. Officer. Beskles he was purposely not promoted. Even damages Rs. 57.141 were recovered illegally. So he prayed to recover Rs. 10,500 per month for a period of 5 years. He also prayed to give promotion with instruction to first party. with antillary benefits.
- This is disputed by first party by filing written statement at Ex-15 stating that, second party is not a

'workman' and as such he is not entitled to raise dispute Besides in is contended that, he has not exhausted departmental remedies before approaching the Tribual or Conscilination Officer and on that count also his reference faits. Besiders it is contended that he filed recovery application under Section 33 C (2) before NIT-L Mumbui where he got relief. Even he is promoted as per his claim. But he did not report on promoted place since he was not getting ITRA facility which is available at Mumbai. So it submitted that, entire claims of second party does not stand and require to be rejected.

 In view of above pleadings issued framed at Ex-18 are answered against it as follows:

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FINDINGS

 Does First Parry prove that decision taken by it of imposing punishment of decluction of salary from the scale of Rs. 8500/- to Rs. 6500 for 5 years is justifiable?

Does not Servive

2 Does Second party prove that he is entitled for the promotion as stated in para 2.1 of the Statement of claim?

No.

3 Does he prove that action taken by first party in not refunding the rest was against rules?

Yes.

4. Does he prove that action taken by first party of cancellation of Railway Quarter allotted to him was against the principles of natural justice?

Does not surviva-

5. Is Second pany entitled for setting aside the pointsh ment awarded to him by order dated 14.7-2003 and of 1997 and is entitled for refund of damages?

Yes.

6. What order?

As per order below.

Whether second party is a workman?

Yes

REASONS

Issue No. 7:-

5. This is an important issue which goes to the roof of the status of the second party workman as first party has challenged his status at the begining of the written statement centending that second party is not a "workman" as he was discharging duties in the capacity of Suprvisor. Except that, no case is made out by first party. Moreover it is pertinent to note that, application filed by second party was decided by CGIT-I where CGIT-I Mombai observed in said Application of second party as "workman". Suid was decided on 9-1-2006. Besides in the evidence no specific case is made out and no evidence is led to project on duties.

of the second party to treat him as 'not workman' an dexclude him from the definition of "workman". Burden of proving this issue rest on both. Second party has to prove that he is workman whereas first party has to prove that he is 'not workman'. The case of bolding by Inquiry Officer on the charges of sub letting Railway Quarter to others allowed to second party are admitted and reveals that, second party was presumed by the first party as a 'workman' for ever in the proceeding as well as initiating enquiry against him. In recent roling Heth'ble Bombay High Court while deciding case of George Thomas V/s Science Technical Centre published in 2007 ECLR page 185 recently. observed that, "When all the time workman is treated as employee, he is to be declared as a workman under Section 2 (a) of the Industrial Disputes Act." Considering this midcase made out by both I conclude that, second party is workman.

Issue No. 1 :-

This issue is regarding imposing punishment of reduction of salary from scale of Rs. 10,500 to Rs. 6,500 for 5 years which was questioned by second party and to see whether it was legal? As far as this issue is concerned, we find no pleading is made out by second party in claim statement filed at Ex-13 vis-a-vis in the Written Statement filed by first party at Ex-15. I think this issue came and appears to be from dispute referred by the Central Government, Ministry of Labour about treating as one of the dispute. However nothing is stated by second party on this in this reference nor considered it by first party to reply it though it is actually one of the subject matter of the reference. In the entire reference both have concentrated on sub-letting of Railway Quarter by second party, chargesheet issued against second party, enquity conducted, charges were exonerated by the Inquiry Officer still management took different view and recovered the tent from second party from his wages. Hesides issue of promotion is made out by second party and it is challenged. by first party. As far as enquiry, reduction of salary from Rs. 8500 to 6500 is concerned is not at all subject matter of the evidence led by both and case made out by them. So I conclude that, this issue does not arise since not traced by both.

Issue No. 2:---

This issue is regarding entitlement of promotion. by second party. Said is denied by first party saying that, though promotion was offered to second party has ignored it and now he cannot claim promotion. In that respect if we peruse cross examination of second party we find, that he admitted that he was promoted on 4-11-99 as Sr. Section. Engineer. He further stated that, he was not officially informed. Answer given by second party to this reveals. that, he was promoted and he is not denying that he was promoted. Even he admits that, he has produced the copy of it obtained by him from others, where his name is also included in the promotion list. When he was questioned on that, he replied that, he got same at that time only. Even he admits that he was promoted and transferred to Kurduwadi and when question as to why he did not proceeded to promoted posting to which he replied that question does not arise since department proceeding was pending against him. In my considered view pending department proceeding cannot be excuse to join on transfer

and promotional post. He also admits that, due to transfer to Kurduwadi he was losing HRA from 30% to 7.5% since He was getting 30% at Mambai and will be getting 7.5% at Kurduwadi. Besides he answered that, the cannot be transferred on promotion since he is senior most. He admits that, he has not challenged promotion on that ground before any forum. So all these reveals that, opportunity was given to him by promotion on the post of Sr. Section Engineer on 4-11-99 but he admits that, he did not report on that post. This reveals that, he suo motto waived his right of promotion. As of right as per his whims and ideas he cannot claim promotion, as observed by Apex. Court recently where it is observed that promotion is not a right.

Laures No. 3 to 5 :---

- The main grievance of second party is that, enquiry conducted against him on the ground of alleged sub letting quarters of Mazgaou and at GTB Nagar was not correct. Charges were not proved. Though the charges were exoderated charge sheet was served and enquiry was conducted. According to second party question of subletting Railway Quarter of Mazgaon and at OTB Nagar does not arise as quarter was allotted to him of Byculls and not of Mazgaon and GTB Nagar. Even Inquiry Officer exonerated the charges of subletting Railway Quarter of Mazgaon and GTB Nagar, Even there was not evidence. before Inquiry Officer to conclude that, second party has literally subtened Railway Quarter to other. Even there was no finding from Isquiry Officer on that point against the charges of subletting quarters. Still Management has punished him and recovered damages.
- The witness examined by first party Ea.-21 admits. that the quarter was not checked to ascertain whether it is sub-letted by second party. Even he admits that, charges were exonerated by Inquiry Officer. Even he admits that, damages, recovered from second party of Rs. 32,300 were refunded to him. Even CGIT-I, Mumbai in 33 C (2) Application observe said recovery of damages were itlegal. and second party is entitle to recover it from first party-Said order is not challenged by first party. Even second party admits that, damages Rs. 32,196 were repaid to him. after 9 years. When finding of Inquiry Officer was not against second party and when charges were not proved. and when damages recovered were repaid to the second party as per order passed in application filed under Section. 33 C (2), Lath, of the view that, now second party is not entitled to any relief. It is proved that, cancellation of Railway Quarter allotted to him and charge of subletting it. was against the principles of natural justice. However this Court cannot consider that aspect though representative of second party place reliance on number of rulings.
- As far as issue No. 5 is concerned, he has secured order of CGIT-1an Application filed under Section 33 C (2).
- So if we consider all that coapled with case made out by both. I conclude that at present second party is not entitled to get any more. Hence the order.

ORDER

Reference is rejected.

Date: 12-6-2007 A. A. LAD, Presiding Officer

नई दिल्ली, 17 जुलाई, 2007

का, आ. 2 र49,—औहोगिक विवाद अधिनियम, 1947 (1947 का (4) की धार 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इॉग्ट्या के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बोच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, आवपूर के पंचाट (संदर्भ संख्या 4/2002) को प्रकाशित करती है, की केन्द्रीय सरकार को 17 1-2007 को प्राप्त हुआ था।

> (सं. एल-12012/357/2001-आई आर (बी-1)] अजब कुमार, डेस्क अधिकारी

New Delhi, the 17th July, 2007

S.O. 2149.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government beselve publishes the Award (Ref. No. 4/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Kampur as shown in the Amnexire in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 17-7-2007.

[No. L-12012/357/2001-IR (B-I)] AJAY KUMAR, Desk Officer ANNEXURE

BEFORE SRI R. G. SHUKLA, PRESIDING OFFICER, C.G.LT. CUM-LABOUR COURT, KANPUR, UTTAR PRADESH

Industrial Dispute No. 4 of 2002

In the matter of dispute between:

Sr. Saiepdra Komiir Jain 5/o Laie Sh. Parmeshi Prasad Jain R/o 23 Jhanda Bazar Dehradun:

And

The Gederal Manager State Bankrof India Zonal office Rajpur Road Madhaban Hotel Debradun.

AWARD

- Central Government, Ministry of Labour, New Delhi, ride antification No. L-12012/357/2001-IR (B-I) dated 17-1-2002 has referred the following dispute for adjudication to this tribunal:—
 - "Whether the action of the State Bank of India Dehradum in terminating the services of Sh. Satendra Kumar Jain Pigmy Deposit Agent, w.c.f. 10-3-1989 is justified? If not, what relief he is entitled?"
- 2. In the instant case after receipt of the reference order from the appropriate government, registered notices were issued to the contesting parties by the Tribunal for filing their claims and counter claims. In response to the same contesting parties fited their claim, and counter claim perfore the tribunal and thereafter rejoinder statement was also tried by the workman.
- It is needless to mention that neither the concerned workman nor his authorised representative has even

attended the proceedings of the case at any point of time. Whereas statement of calim was filed on behalf of the workman through the brief holder Sh. Pawan Kumar Tripathi, of the representative for the workman, rejoinder statement on behalf of the workman was received in the office through post. It may also be pointed out that the rejoinder statement filed on behalf of the workman was rejected by the minunal vide order dated 14-7-2003 as the same was not found to be proper and the case was posted for evidence of the parties. Neither workman himself nor his representative ever presented themselves before the tribunal for adducing evidence in support to their case. Management apart from filling documentary evidence has also adduced tral evidence of their witness by name Inder Mohan Bhargawa as M.W. I, but he was not cross examined from the workman as none was present on the date of recording evidence of the management. The evidence of the management, therefore, goes un controverted and the tribunal feels no hesitation in believing the same. It is also clear from the conduct of the workman that he palpably failed to substantiate his claim before the tribunal by adducing acceptable evidence real as well as documentary.

- Any way at may be pointed out that it is common ground of the contesting parties that the contesting parties perived at an agreement dated 29-3-79 in which it was agreed upon between the parties that the concern workman will provide services to the management of State Bank of India. for which he will be paid remuneration. This agreement was arrived at under a scheme know as Janta Deposit Scheme and a copy of the agreement dated 29-3-79 is on record of the case. Under the terms of agreement the workman, was required to open small accounts under the said scheme from public at large and to deposit the same with the bank that the workingn will be provided wages/ remuneration by way of commission on the amount deposited by the workman under the scheme. It was also agreed upon between the partles that in case of violation of any one of the conditions of agreement, his agency is liable to be terminated without any prior notice by the bank.
- It is the specifies case of the workman that the bank has terminated his services w.e.f. 10-3-89 without any notice or without having any departmental inquiry against him, therefore, the termination of his services from bank is in gross violation of principles of natural justice. It is the (urther case of the workman that the bank had also lodged a F. I. R. on 10-3-89 under section 408 of I. P. C. on false ground which ultimately culmmated in favour of the workman as he was honorably acquitted by the criminal coun vide judgement dated 17-12-1998. The workman thereafter approached the authorities of the bank for his reinstatement but all in vain, Ichas been further pleaded by the workman that in any case he could not have been removed from the services of the bank without there being a regular departmental inquiry against him on the alleged charges for which F. I. R. was lodged by the bank. Lastly it has been pleaded by the workman that the entire action of the opposite party is wholly allegal and violating the sules

governing the service conditions and principles of not saljustice therefore, he should be reinstated in the services of the bank with full back wages, continuity of service and all consequential benefits.

- 5. On the other hand the claim of the workman has been contested by the management bank on variety of grounds, inter-olid, that the workman was never appointed against any sanctioned post by the management of State Bank of India after subjecting him through regular selection process nor any appointment letter was over issued to him by the bank. As a matter of fact the bank has terminated the terms of agreement bound agency, as the work of the workman was not satisfactory which cannot be construed as removal from service as claimed by the workman. It has also been pleaded by the bank that the bank hired the services of the workman under Janta Deposit Scheme and the workman was paid his commission on deposit. He was never paid his wages as was paid to regular and permanent employee of the bank, it was clearly indicated in the agreement that bank may without notice terminate the agency at any time, if the deposit collector; (i) commits treach of any of the terms and/or conditions of this agreement and of the Rules and Regulations referred to above and also of other such directions as may be issued from time to time by the brok in this behalf; (ii) is adjudicated. insolvent or is convicted by any criminal court for any offence involving moral turpitude or is declared to be of unsound mind by any court of competent jurisdiction or; (iii) suffers in the opinion of the bank from any physical or other infirmity that renders him unfit for discharging or fulfilling his duties and obligations under this agreement; (iv) is guilty of misappropriation or misapplication of amounts collected from the deposits; (v) commits any act which the bank considers as prejudicial to its interest or is found defaulting habitually in observing the Rules and Regulations or directions.
- It has further been pleaded by the bank that during. the period April 1988 to November 1988 workman collected Rs. 34,748 from various Janta Deposit Holders but did not deposit the same in the branch, which was required to be deposited by him either on the same day or at opening hours of the branch on the following day. The workman yide his letter dated 18-3-88 has admitted that he has not deposited the same in the branch. This clearly amounts misappropriation of funds of the depositor and also not observing rules and regulations framed by the bank. Regarding termination of the agency of the claimant, the Branch Manager of the bank issued a public notice dated 1-3-89 in local news paper known as 'Doon Darpan' and after cancellation of his agency the claimant returned all the papers, 1-Card, deposit slip bill, account opening forms esc. It has also been pleaded by the bank that various depositors from whom the claimant collected deposit under the scheme during the above period aggregating to Rs. 33,748, contrary to the terms of agreement he had deposited only a sum of Rs. 23,600 in these instalments and sought further time vide his letter dated 28-4-89 for deposing.

- the rest of the arrount. When all efficies failed to get deposit the remaining amount from the claimant Branch Manager lodged FIR dated 28-5-89 against the workman at P S Kotwali, Dehradan. The work of deposit collector in Janta Deposit Scheme and the work of regular and permanent employee of the bank is distinguishable and cannot be brought at par with each other. Bank has simply tempinated the agency of the claimant in view of stipulation crostained under sub provision (1) of prevision 4 of the agreement dated 29-3-79. It has also been alleged by the bank that when the claimant never remained in the employment of the bank at any point of time question of terminating his services from the bank does not arise at all and the wiskman on this score cannot be held emitted to be reinstated in the services of the bank.
- Ex parte arguments on behalf of the hank were. heard in detail by the tribunal and the tribunal has also examined the file carefully. As pointed out above, the evidence of the management in support of their case goes. uncontroverted hence the tribunal feels no hesitation in believing the case as set up by the opposite party that bank has simply terminated the agency of the ciaimast instead terminating his service from the bank. Tribunat is: further of the view that termination of agency under contract connet be construed to be termination of the service of the claimant by the bank. The claim of the claimant also appears to be barred by the provisions of Section 2 (on)(bb) of the I. D. Act, 1947. It is settled law that the tribunals are not empowered to reduce or enhance the scope and ambit of the schedule of reference order in view of sub section (4). of Sec. 10 of the Act, therefore, it will be futile exercise on the part of this tribunal to travel beyond the scope and ambit of the terms of agreement dated 29-3-79, which is the very basis of schedule of reference order which clearly indicate that the bank has terminated the agency of the claimant in terms of Para 4 (1) of the agreement dated 29-3-79. In view of it cannot be presumed even for the sake. of arguments that the alleged claimant ever remained in the active employment of the opposite party bank or bank has ever issued any appointment letter in his favour or there. existed any regular or permanent vacancy at the branch therefore, from this point of view the schedule of reference order appears to have become infruences. Therefore, it is: concluded that bank have never terminated the service of the claimant from any regular or permanent post, question of granting him relief as claimed, does not arise at all.
- 8. In the end it is held that workman has palpably failed to substantiate his claim before the tribunal by adducing acceptable evidence, therefore, be cannot be held entitled for any relief and the reference order is bound to be answered against the claimant.
- 9. Accordingly award is made absolute holding that Sri Satendra Kumar Jain is not entitled for any relief and the award is decided against the claimant and in favour of the opposite party bank.
 - Reference is answered accordingly.

R. G. SHUKLA, Presiding Officer

नई दिल्ली, 17 जुलाई 2007

कां,आ. 2150.—औंबोगिक क्विन् अधिनियम, १९४२ (1942 का 14) की धारा]7 के अनुसरण में, केन्द्रीय सरकार कॉकन रेखवे कॉरपोरेशन लिमिटेड के प्रयंधतंत्र के संबद्ध नियोजकों और उनके भर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय भरकार औद्योगिक अधिकरण सं 11, मुख्यई के पंचाट (संदर्भ संख्या 30/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-7-2001 को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-7-2001 को प्राप्त सुआ। था

[सं एल-41012/06/2001 आई आर (वी])] अजर सुभार, इंस्क अधिकारी

New Deibi, the 17th July, 2007

8.0., 2150.— In pursuance of Section 17 of the Industrial Disputes Act. 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.30/2001) of the Central Government industrial Tribunal-II, Mumhai as shown in the Annexure in the Industrial Dispute between the Management of Konkan Railway Corporation Ltd. and their workman, which was received by the Central Government on 17-7-2007.

(No.L-41012/06/2001-IR (B-I))

AJAY KUMAR, Dosk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.E, MUMBAI

Present: A. A. Lad, Presiding Officer

Reference No. CGIT-2/30 of 2001

EMPLOYERS IN RELATION TO THE MANAGEMENT OF KONKAN RAILWAY CORPORATION LTD

The Chref Enganeer.
Kenican Ragway Corporation Ltd.,
Kenican Ragway Corporation Ltd.,
Kenican Country,
Braiway Cotoplex, MIDC, Marjole
Ramager 445 639 (MS)

And

The Workman, Mr. Revirsale Mannhar Muiye, Post Panvali Tal. & DistajRatnagio, 415 619 (Minurashija)

APPEARANCES

For the Employer : Mr. Gurunath Naik Advocate

itorahe Workman ; Mr. J. H. Sawant Advocate

Mumbai, dated 11th June, 2007

AWARD

The Government of India. Ministry of Lahour, by irstorder No. L-41012/6/2004 [IR(B I)] dated 22-02-2001 in exercise of the powers conferred by Clause (d) of Subsection (1) and Sub-section 2 (A) of Section 10 of the Indistrial Desputes Act, 1947 referred the following dispute to this Tribunal for adjudication:—

"Whether the action of the management of Chief Engineer (South) Konkon Railway Corporation Ltd., Ratnagiri in terminating the services of Shri Ravinder Manohur Mutye w.e.f. 1-7 1995 is legal and justified? If not, in what relief the workman is estimed for?"

- To support subject matter referred in the dispute, second party rely on claim statement filed at Ex-6 stating that, he joined first parry in the capacity of watchman w.e.f... 13-12 92. He worked continuously. He was posted for 12. hours watch duty at Open Yard Store. He was attending work which is of permanent nature. He was signing record and muster maintained by first parry. He was supervised by Assistent Controller of Stores. He was paid monthly on daily wages for Rs. 30 for 12 hours duty. First party exploited second purty workman taking advantage of his social and economic backwardness. He was not granted privitegaleave or any other benefits. On 01-07-95 he was lasked by Chief Engineer not to report on duty. According to secondparty, said instructions were against the privisions of Indistrial Disputes Act, more precisely said instructions. violate Section 25 F of Industria! Disputes Act. So it is: submitted that instructions given by Chief Engineer (South). preventing workman not to arrend duty from 1-7-95 bequashed and set aside directing first party to reinstate him with benefits of backwages and other consequential benefits.
- This is disputed by first party by filling wratten. statement at 15x-8 denying relationship as Employer-Employee. It is contended that second party was taken on Contract basis. He was purely working as temporary workman on daily wages. No assignment was given to himby the first party. Wages were given at the rate of Rs. 30 per day. He automatically stopped in reporting from duty from 1st July, 1995. The alleged termination w.e.f. 1st July. 1995 is challenged by second party by approaching ALC (C) in 2000 i.e., after about five years. He worked with first. party nn contract basis from 13-12-92 to 1-7-95 and remained. absent without intimation and abandoned the job thereafter. When second party was not regular employee does not arriact the protection given under Industrial Disputes Act. and in that scenario first party was not supposed to give notice, offer retrenchment compensation or follow procedure of issuing charge-sheet on abandonment of jusand conduct enquiry. So it is submitted that, claim be rejeuled.

4 In view of above pleadings, my Learned Producessor framed issues which are answered against them:

	Issues	Findings
1.	Whether the workgran was in continuous service as contemplated under the Industrial Disputes Act?	No.
2	Whether the management complied with the provision made under the Konkan Railway Corp. Ltd., (Discipline and Appeal Rules) 1992?	Does not arise
<u>2a</u> .	Whether management proves that workman abundoned the service w.e.f. 1-7-1995?	Yes
3.	Whether the action of the management of Chief Engineer (South) Konkan Railway Corporation Ltd., Railway in terminating the services of Shri Ravinder Manoher Malys w.e.f. 1-7-95 is legal and justified?	Does not arise
4.	What relief the workman is	

Reistons

. 119

Does not arise

Issue No. 1:

entitled to?

- 5. Second party claimed that, he was instructed by Chief Engineer (South) not to report on duty from 1-7-95 claiming that he worked with first party from 13-2-92 as a workman and having wasch and ward duty in an Open Yard Store. He also claimed that he was getting salary for his 12 hours work on duty wages of Rs. 30. He also claimed that he was not getting public holidays as well as earned leave. He also claimed that he was supposed to work for tweive hours. All these things are admitted by first party. Even case of the first party is that he was taken on contract basis and was paid on daily wages.
- 6. It is admitted position that, second party was not interviewed and selected by first party. It is matter of record that to have watch & ward daty, it an Open Yard Store and that too for 12 hours shift if considered, coupled with say of the second party that, he was not getting public holidays or any other concession as regular employee status was given. It is rather clear that, he was engaged on daily wages. Besides case of the second party that, he was to work in a shift of 12 hours which is not at all applicable to a regular employee also support the case of daily employment of second party. Besides no appointment order is produced and even not claimed by second party he was appointed

- by first party on regular basis. Even he has not produced any document that he signed muster roll and was a regular suployee of first party. When all these questions remain unanswered question arises whether such a person can be called as a regular employee of first party?
- It is fact that he worked confinuously from 13-2-92. to 1-7-95 and did not work thereafter. Case of the first party on that is second party abandoned the job and whereas case of second party is that he was instructed not to report on duty from 1-7-95. That means if that is so, definitely it \cdot was injustice on second party as he is almostly asked not to report on duty from 1-7-95. It is matter of record that, said grievamors as alleged by second party are agitated by him first time in 2000 and that too before Gos ALC (C). That fact is not desired by accord party. So this act of second party and the decision taken in challenging the so called refusal by the Chief Engineer wielf, 1-7-95 if considered, question arises, how one can wait for such a long period. on such plain instruction not to report on duty? Even that question was put to second party in cross but the unable. to explain a stinfactorily and say that he did not get advice on that point. All that in my considered view, raising dispute or making grievances does not require any guidance. If at all it required guidance then why in 2000 only he raised it? All those questions remained usans wered.
- The evidence led does not prove that, he worked continuously as contemplated under industrial Disputes Act as a employee of first party. On the contrary first party. claim that be was taken on contract basis and he stopped reporting from 1-7-95. That fact is not disputed i.e. regarding absentee of the second party from 1-7-95 onwards. When there is such a long absence, it reveals that, second party is not doing work continuously as expected under industrial Disputes Act of first party but definitely might have worked on contract basis. Moreover, case of second party of 12 hours shift, payment on daily, wages Rs. 30 and not getting any concession of public holidays and other things reveals. that he did not work continuously as expected under Industrial Disputes Act. So I answer this issue in the negative. . .

Issue No. 2 & 3:

- 9. Case of the second party that, without following provisions of Industrial Disputes Act he was illegally prevented in reporting on duty and action of the Chief Engineer South in instructing second party dot to report on duty w.e.f. 1-7-95 is illegal. Whereas case of the first party is that since second party was not regular employee of it, question of following provision of Industrial Disputes Act does not arise. Besides the suo motto stopped in reporting on duty w.e.f. 1-7-95. In that scenario question of instructing him not to report on duty by Chief Engineer (South) does not arise.
- 10. Besides in that connection second party place reliance on his affidavir filed at Eu-17, he the cross he admits

that he was notimade permanent. He admit that no such a letter was given by first party. He admits that he was not served by letter about leaving job from 1-7-95. He admits that, he received wages up to June 1995. He states that though he informed in writing about his refusal on duty from 1-7-95 he has no proof of it. Even he admits that he kept silent from 1-7-95 to August 2000. AB this reveals that second party kept silebt for 5 years and when he got guidance he rather raised dispute to see what can be achieved. Even witness examined by first party at Ex.-20, 21 and 22 does not support case of the second party and throw any light to conclude that second party was prevented in reporting on duty w.e.f., 1-7-95. When second party is not workman of first party question of following provision of Industrial Disputes Act does not usise. Besides when he is not workman of first party question of giving instruction by the Chief Engineer to second party ript to report on duty from 1-7-95 also does not azises. On the contrary silence of second party from 1-7-95 till August 2000 i.e. till he approached the Goa AL C. (C) proves that, he himself estopped in reporting on duty. which is noting but abandonment of job by the second party on his own and when he abandoned the job and when he is not regular emptoyee of first party question of giving charge speet, or notice about absenteeism or holding. enquiry does not arise. So I conclude that first party was not supposed to conduct enquiry and does not require to follow provision of Industrial Disputes Act for such self. decision of second party since second party abandoned. the job. Accordingly I answer these issues to that effect.

Imme No. 4:

- 10. When second party fails to prove that, he is not employee of first party and was illegally terminated, question of elaim made by him does not require to consider. On the contrary his attitude, his approach and his silence from 1-7-95 till August, 2000 reveal that he was not interested in the work and soo moto left. All this reveals that second party abandoned the job and it is not that due to so called instruction give by Chief Engineer (South) not to report on day w.e.f. 1-7-95 does not arise to treat as a termination. Se I conclude that, second party abandoned the job.
- 11. In view of discussion above I conclude that, accord party is not catified for any relief and as such this reference required to be rejected. Hence the order:

ONDER

Reference is rejected.

Date: 11-06-2007

A. A. LAD, Presiding Officer

नई बिल्ली, 18 जुलाई, 2007

का.जा. 2151.— औसोगिक कियाद अधिकियम, 1947 (1947) को 14) की साथ 17 के अनुसरण में, केन्द्रीय सरकार मुख्यई पोर्ट ट्रस्ट के प्रकारक को संबद्ध नियोजकों और उसके कर्मकारों के बीच. अनुबंध में निर्दिष्ट और्छोयिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण्यश्रम न्यायालय, सं. 11, मुम्बई के पंचाट (संदर्भ संख्या 2/52/2003) को प्रकाशित करती है, वो कंन्द्रीय सरकार को 16-7-2007 को प्राप्त हुआ वार्ष

> (स. एल-31011/9/2003-आई आर (बी-II)) राजिन्द्र जुमार, डेस्क अधिकारी

New Delhi, the 18th July, 2007

S.O. 2151.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 2/52/2003) of the Central Government Industrial Tribunal-cum-Labour-Court-II, Mumbui as shown in the Amestere in the Andustrial Dispute between the Management of Mumbai 'Port Trust and their workman, received by the Central Government on 16-7-2007.

;No. L-31011/9/2003-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXIONE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

PRESENT:

A. A. Lad. Presiding Officer

Reference No. CGIT-2/52 of 2003

Employers in relation to the Management of Mumbai Port Trust

The Chairman, Mumbai Port Trust, Port Bhavan, Ballard Estaur, Mumbai-400038

And

The Workman,

The President
Transport and Dock Workers Union
P. D'mello Bhavan,
Carnac Bunder,
Mumbai.

APPEARANCES

, For the Employer

Mr. Umesh Nabar, Advocate

For the Workman

Mr. A. M. Koyande, Advocate

Mumbai, dated 5th June, 2007

AWARD PART-I

The Government of India, Ministry of Labour, by its Order No. L-31011/9/2003-IR(B-II) dated 11-09-2003 in

exercise of the powers conferred by Chase (d) of subsection (1) and sub-section 2 (A) of Section 10 of the Industrial Dispute Act, 1947 have referred the following dispute to this Tribunal for adjudication:—

"Whether the action of the management of Mumbai Port Trust in removing from service of Shri Pandharinath Lokunde, Shore Worker, Docks Department MBPT w.c.f. 9-5-2001 is legal and justified? If not, to what relief Shri Pandharinath Lokunde is cutified to?"

- 2. Claim Statement is filed at Ex-11 by Secretary Transport & Dock Workers' Union stating that the services of the concerned workman was terminated illegally w.c.f. 9-5-2001. Said was challenged before competent authority which did not consider and concerned workman was removed from employment. Union raised dispute regarding concerned workman's termination stating that chargesheet dated 28-08-2000 served on concerned workman alleging of habitual absence ism was false one. It was alteged that concerned workman remained absent unauthorisedly from 20-05-1998 to 31-12-1998 and thereafter continued to remain absent from 08-01-1999 to 28-08-2000 by which he violated Regulation 3 (IA) (ii) and of the B.P.T. Employees (Conduct) Regulation 1976 read with Regulation 8 & 12 of the BPI Employees (Classification, Control and Appeal) Regulation 1976. According to union concerned workman was already penalized for the period of 1994 to 1998. He also applied for regulation of his absence and same was regularised. His absence from 8-1-99 to 12-10-2000 has justification as he was mentally disturbed. He was admitted to Punchospital and was taking treatment. Said was explained by him, still show cause notice dated 29-3-99 was issued by first party about his absenteeism proposing the penalty of removal from services which he replied still, said action. was confirmed. The appeal filed by him was turned down.
- 3. According to him, though there was evidence before Inquiry Officer about his absentenism and sufficient grounds to regularise his absentenism instead be was not considered for regularisation of his absentenism and very harsh and disproportionate action of removal was taken. So it is prayed that, findings given by Inquiry Officer may declare perverse and punishment of removal be set aside with direction to first party reinstate concerned workman with benefit of backwages and continuity of service.
- 4. This is objected by the first party by filing written statement at Ex-15 stating that, second party is habitual in remaining absent on duty. On number of occassions, he remained absent without informing or without getting sanctioning leave which affect the working of the first party. Said workman was working as a Shore worker. Even his service record was not clean and unblemished.

though number of warnings were given to improve his attendance, instead of improving in it, he developed it by remaining absent unauthorisedly. He was not having habit to intimate cause behand absenteeism. He was not applying in advance for leave. He did not explain why his absenteeism should be regularised when served with charge sheet and face enquiry. He did not utilize that opportunity to explain his absenteeism and justify how it is to be regularised? Since there was no reason to remain absent from duty anauthorisedly, first party by holding enquiry and observing findings given by the Inquiry Officer which has base and grounds rightly concluded to remove second party observing not interested in the work. Since second party has no justification and since findings given by Inquiry Officer is just and proper, it is submitted that, action taken by first party on the said basis be maintained observing findings not perverse.

5. In view of above pleadings, issues are framed at Ex-17. Out of it issues No. I of perversity of findings is treated as preliminary issue which reads as follows alongwith its findings.

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Pindings:

1. Whether findings perverse?

No

REASONS

- 6. Second party Union challenged the removal of the concerned workman dated 9-5-2001 which was taken by first party on the basis of the enquiry conducted after issuing charge sheet and obstaining findings of the Inquiry Officer. According to the Union Inquiry Officer was not having reasons to conclude about absenteeism treating it was unauthorised of the concerned workman. Concerned workman submitted all documents which were not considered by Inquiry Officer and without going through those, findings given by Inquiry Officer is perverse.
- 7. It is pertinent to note that second party though challenges the perversity of findings decided not to lead evidence by steping in to witness box and by intimation Ex-18 he inform to that effect.
- 8. So the evidence before us is the evidence recorded by Inquiry Officer about absenteeism which is filed by the first party in the form of Xerox copies with Ex-16 to decide whether findings of Inquiry Officer is perverse? On the basis of said both argued their respective case.
- 9. Before us is the point of findings of inquity Officer. According to second party findings of inquity Officer are perverse. That means second party is not challenging the enquiry and its procedure and fairness of it. By this second party want to challenge the findings of inquiry Officer only.
- 10. We have to see the evidence placed before inquiry Officer which we find with Ex-16 and more

precisely frompage on 21 on wards till page 30. The perusal of the said findings reveals that concerned workman has not prayed for leave in advance. From question No. 2 it reveals that, what ever leave was at the credit of concerned workman were sanctioned to him and remaining portion was bleated unauthorised absence. Question No. 4 reveals that though concerned workman produced medical certificate of Dr. Sarode, Psychiatrist, Pune Hospital from 8-1-99 to 3-11-2000 it was produced at the time of joining of duty and no intimation was given about his admission in hospital and taking treatment from concerned Dector and absentuism. Even it is brought on record that concerned workman did not try to communicate or convey the reason behind absenteeism so as to enable first party to adjust his work. From this enquiry it is not pointed out by the second party's advocate which evidence was agonored by the Inquiry Officer observing concerned workman guilty of the charges of unauthorised. absentecism?, Nothing is pointed out.

 When medical certificate of Pune Doctor was: produced at the time of joining duty for period of 8-1-99. to 3-13-2000 and when it was not intimated to first party, by any means by the concerned workman, about his alleged sickness it reveals that charge of 'unauthorised absenteeism* means "proceeded on leave without sanction" is proved against concerned workman. It is not pointed our by the concerned workman that, he was onauthorised leave and was punctual in reporting to the first party. Even charge of unauthorized absenteeism is: not for once 4s it is going on for years together which revels that, concerned workman developed said habit of remaining absent without infimation and sanctioning leave. Even he is unable to point out his grievance before. authority vis-a-vis before this Court, So if we consider all this coupled with case made out by both, I conclude that, the findings given by Inquiry Officer cannot be observed perverse and Econclude that findings, is not perverse and bence the order.

ORDER

- Findings of the Inquiry Officer are not perverse.
- Both parties to appear in this reference on the point of quantum of punishment.

Date: 05406-2007

A.A. LAD, Presiding Offseer

: नई दिल्ली, LB जुलाई, 2007

का. अ. \$152.— औद्योगिक विवाद अधिनियम, 1947 (1947) का 14) की धार्म 17 के अनुसरण में, केन्द्रीय सरकार बैंक आंक रिडिया के प्रबंधती के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण अब नियासलय नं. 1, मुम्बई के पंचाट (संदर्भ संख्या 44/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-7-2007 को प्राप्त हुआ था।

> [सं. एल-120:2/36/2004-आई. आर. (ची-प्र)] राजिन्द्र सुमार, डेस्क अधिकारी

New Delhi, the 18th July, 2007.

S.O. 2152.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.44/2004) of the Central Government Industrial Tribunal-cam-Labour Court-I, Mumbai as shown in the Andexure in the Industrial Dispute between the management of Bank of India, and their workman, received by the Central Government on 16-7-2007.

[No. L-12012/36/2004-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXIRE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, MUMBAI

Present : Justice Ghanshyam Dass, Presiding Officer

Reference No. CGIT-44 of 2004

Partles:

Employers in relation to the management of Bank of India

And

Their Workmen

APPEARANCES:

For the Management: Shri Lancy D'Souza

Shri Ganesham

For the Workman : Shri Patel, Advocate.

State : Maharushtra

Mumbai, dated 28th Jume, 2007

AWARD

This is a reference made by the Central Government in exercise of its powers under clause (d) of Sub-section 1 of Section 10 of the Industrial Disputes Act, 1947 (the Act for short) vide Government of India, Ministry of Labour, New Delhi Order No. L-12012/36/2004 -IR(B-II) dated 31-5-2004. The terms of reference given in the schedule are as follows:

"Whether the serion of the management of Bank of India in awarding the punishment of Tremoval

from service with superannuation benefits and without disqualification from future employment vide order dated 9-12-2002 to Shri S.B. Jadhav, Cashier-Clerk is justified, proper and in proportion to the alleged charges of misconduct? If not, what relief the workman is entitled to and from which date and what other directions are necessary in the matter?"

Mr. S.B. Jadhav (for short workman) was issued tharge sheet dt. 27-5-2002 which runs as follows:

"While functioning as officiating Cashier incharge at Bank's erstwhile Cotton Exchange Branch during May 1998, acts of misconduct, as hereinafter mentioned are alleged to have been committed by you:—

That, you accepted in clearing 5 cheques crossed account payer and made to the order totalling to Rs. 49.89,362/- issued by the Customs Authorities to different parties having accounts with Bank of India in the third party C/D account of M/s. Vijaya Trading Company, the details of which are furnished hereunder:

Sr. No		Cheque No.	Credited On	Amount of Cheque (Rs.)	Cheque in favour of BOI A/e.	Collected in the Account of
1.	RBI, Fort, Mumbai	837001	6-5-1998	3,71.370-	Sunita Garments	C/D A/c No. 40160 Vijay Trading Co.
<u>,</u>	RBL Fort, Mumbai	837002	6-5-1998	4,21,927/-	Sri Garments	-do-
3.	RBI, Fort, Mumbai	809090	21-5-1998	20,92,263/-	Dadar Overseas	-do-
I,	RBI, Fort, Mumbai	839470	22-5-1998	13,34,843/-	Subita Garments	-do-
ī.	RPI, Foxt, Mumbaj	839669	22-5-1998	7,68,956/-	Deshurukh Overseas	-do-

That, in terms of Bank's instructions, although, the facility of collection of cheques in third party accounts can be selectively extended to certain valued customers of old standing against their indemnity, such 2 (actility was expressly forbidden in the case of dividend/ interest warrants/refunds orders. The 5 cheques accepted by you were issued by the Customs Authorities and were drawn on Reserve Bank of India and were in fact duty draw back refonds issued to the exporters. In view of this position, you should have been all the more careful white accepting the aforesaid cheques in a thrid garty account. Further, you have accepted account payee order chaques for large amounts in the third party account without obtaining indemnity from the account holder. The account in which the chaques were collected esned be termed as an account of valued customer of oid standing, as the account has been opened on 7-111-1997 and had only negligible balance at the end of esch day. Moreover, when crossed cheques are collected in third party accounts, endorsoment of the payee is a must; yet in all those 5 cases, you had accepted the cheques in gross violation of Bank's norms, although no endorsement of the payee was appearing on the reverse of the cheques. Since the cheques were by way of payment of duty draw back and were crossed account payee only. However, in gross violation of Bank's norms, you got these cheques collected in a third party. account and that too when none of the cheques were having any endorsement on the reverse. That the

proceeds of the account payee crossed cheques/refund orders thus collected in the third party account were withdrawn therefrom by such third party. Since the proceeds of the account payee cheques/refund orders were collected to third party's account without any mandate from the payee and in gross violation of the Bank's rules/Negotiable Instruments Act, Bank is not entitled for protection and is liable in respect of the amount of Rs. 49.89,362/- for wrongful conversion.

Your aforesaid, acts if proved, would amount to the gross misconduct of "doing any act prejudicial to the interest of the Bank" within the meaning of para 19.5 (j) of the Bipartite Settlement, which reads as under:

"Doing any act prejuticial to the interest of the Bank or gross negligence involving or likely to involve the Bank to serious loss"

- 3. The domestic enquiry was conducted by Shri S. N. Kanade, Chief Manager (O), Mumbai South Zone as Enquiry Officer. The workman duly participated in the enquiry after pleading not guilty. The enquiry resulted in against the workman. The copy of the enquiry report was supplied to the workman. The workman was imped a show cause notice for proposed punishment and at last the final punishment order dt. 9-12-2002 was passed by the Chief Minager, Buillion Exchange Branch/Disciplinary Authority.
- 4. The workman has challenged the enquiry and also the finding of the Enquiry Officer. He has also challenged the quantum of punishment.

- The workman has filed the affidavit of self in lieu of his examination in chief in support of his case.
- 6. The Bank has filed the affiduvit of Shri. S. N. Kanade, Enquiry Officer in licu of his examination in chief. The parties have filed the documents which have been duly exhibited.
- 7. I have heard the learned counsel for the parties and gone through the record. The written synopsis filed by the workman has been penased.
- 8. The domestic enquiry is just and fair since there is no violation of any principle of natural justice. The workman was issued the charge sheet. He duly participated in the enquiry along with his Defence representative. The Bank examined witnesses before the Enquiry Officer and all of them were cross-examined on behalf of the workman. The workman was given due opportunity to lead the evidence in defence and he actually led it. He was given due opportunity of hearing. The procedure adopted by the Enquiry Officer appears to be just and fair. Nothing material is brought on record to show that the enquiry was unjust or unfair for any violation of principles of natural justice.
- Now the question arise as to whether the finding of the Enquiry Officer is perverse and whether the punishment imposed upon the workman is proper.
- 10. Admittedly, the pretiminary investigation into the matter was made by Stri. S. V. Vivekanandan, Chief Manager (Investigation) prior to issuance of charge abeet. Mr. Vivekanandan submitted his report on 6-6-2001 and supplementary report dt. 14-8-2001. The engainy took place on the receipt of the notice from Police haspecter Shri. S. S. Mandlik of C. B. I. Special Crime Brunch, Belapur, New Mumbui for the allegations.

"It is blieged that 23 A/c Payee & Order crossing cheques, amounting to Rs. 203.36 lakes drawn on Reserve Bank of India, Fort, Murabai and issued favouring vaious parties A/c BNOI by customs authorities towards Duty drawback, were allowed to be encashed fraudulently through 3rd party Current A/c No. 40160 of M/s. Vijay Trading Co., (Proprietor Mr. Sudhir B. Mandal), Between 2-4-1998 and 29-6-98 le different to the bank's laid down norms and procedure by S/Shri D. U. Parmar, the Dy. Manager (Deposits) V. M. Parkhe, the Chief Cashier and Sumil V. Indhav, the cashler of Bank of India, cotton Ex. Branch which may likely to result in financial loss to the Bank".

Out of the aforesaid 23 Account Payee chaques the workman white posted as Cashier in absence of regular Chief Cashier accepted the five chaques detailed in the charge sheet amounting to Rs. 49.89 lakhs and without crediting with those chaques in the Payee's Account discharged their payment by crediting into the third party account without obtaining any endorsement from the Payee's Account and also the Indemnity Bond. After investigation, Shri. S. Vivekanandan has given out the following conclusion vide report dt. 5-6-2001.

"The fact disclosed hereinabove would conclusively go to prove that Shri. V. M. Parkhe the Chief Cashier, Ex. Branch, Shri Sunil B. Jadhav and Officer Shri. D. U. Parmar were responsible for the present episode.

Since we apprehend that Mr. V. M. Parkhe (who had also came to adverse notice earlier for similar instances) may try to tamper the records, we recommend that necessary administrative action including suspension may be condisered.

Though there appears to be no actual beneficiaries of the cheques in question and the whereabouts of Mr. Sudhir B. Mandal the proprietor of M/s. Vijny Trading Co., is not known, the customs authorities may in future make a claim on the bank and as such there would be a huge loss to the bank due to the acts of the above staff and officer. However, there has been no claim made so far inspine of lapse of more than 3 years after the said incident".

11. Mr. S. Vivekanandas: vide report dt. 14-8-2001 vide para 12 reported in the following mammer:

From the above facts, it is clear that Mr. V. M. Parkhe and Mr. Sunil B. Jadhav were responsible for accepting A/c Payer crossed cheques drawn on various parties in third party's account for collection. and there was no occasion for the officers to verify the above facts since the respective paying-in-slips were not being sent to the officers at the time of obtaining their signatures in the Outward Memos. None of the paying-in-slips contain the signature of any of these officers. The officers, in a routine course, only verify the total amount of the Outward Memowith the listing patties and sign the outward memos. already signed by the cashier in charge. Although the Outward Memos, now collected were signed by various officers as pointed out in Amexure B" we can safely presume that the cheques in question were sent for collection under the cover of the above. Outward Memos,

We enclose the up dated Annexure "B" and copy of paying-in-slips dated 9-2-(998, 11-4-1998, 4-4-1998, 11-2-1998 and 27-5-1998 along with copies of outward memos indicated in the said annexure, for ready reference. The CBI investigation is still on and we are keeping in touch with Mr. S. S. Mandlik, the CBI I.O. and recently we have submitted the details of accounts connected with this case wherein the main accused. Shri Krishna Kumar Gupta is mostly involved.

12. The aforesaid reports were the basis of the enquiry against the workman. These reports were heavily relied upon by the Enquiry Officer. The evidence which was led before the Enquiry Officer was on the point of proving the documents. The workman never disputed the fact that he was posted as a temporary cashier in absence of the regular Chief Cashier and he accepted the cheques. The facts mentioned in the charge sheet are not in dispute. The

defence of the workman through out before the Enquiry Officer as well as in the instant reference is that there was practice in the Bank for the last 30 years to credit the account. payee cheques of a party to the account of the third party. This fact was clearly reflected by Shri, S. Vivekanandan in his reports and not denied by the Bank in particular. The workman was a temporary cashier. The cheques could not be cleared out without the knowledge and signature of the Officers since they were for the amount more than Rs. 50,000/-. The Officers of the Bank were left out deliberately and the poor workman was made victim just to save the Officers. The case of the Bank through out is that the cheques in question were issued by Customs Authorities and were drawn on Reserve Bank of India. They were wrongly cleared in third Party Account without obtaining indemnity from the account holder and the account in which the cheques were collected were not the accounts of new customers of old standing. The new endorsement of the Account Payee was a must which was not obtained by the workman and thus he committed gross. misconduct under clause 19.5 (j.) of the Bi-partite Settlement. Thus, the Bank was just in passing the final punishment. order vide Section 6(b) of the Bi-partite Settlement.

The finding of the Enquiry Officer equator be mid. to be perverse since there is no dispute about the facts. The workman through out admined facts which amounted to dereliction of duty on the part of the workman who was posted as temporary Cashier on the fateful dates. His contention that there was a regular practice like this does. not appear to be without any basis. It is the admitted position that there was such practice which was duly followed by the workman as well as which fact is clear from the report of Shri. S. Vivekanandan, Similar position was reported by the Enquiry Officer in his report but still he placed the burden upon the workman in view of the circular dt. 16-12-1996 issued by the Bank. The workman tried to deny the knowledge of the circular but this is of no use. The workman was expected to know the circular of the Bank since he was working as a Cashier in the Bank. According to this circular the workman was expected to obtain endorsement from the holder of the cheques for credit into the third party and should have also obtained. Indemnity Bond. This requirement of the law was there just to protect the interest of the Bank so that the holder of the cheque may not put any claim against the bank for wrongful encashment. It may be pointed out that no evidence is available on record about the strict implementation in practice by the aforesaid circular. However, I feel that non-adherence of the aforesaid circular on the part of the workman does not result in any loss to the Bank nor there is any possibility of any loss to the Bank since a period of about 10 years has already clapsed. and no claim whatsoever is being made as per admission. by the bank during the course of argument before me. In these back ground, it cannot be said that on account of gross negligence of the workman there was likelihood of any loss to the Bank. The act of the workman could be said.

to be an act prejudicial to the interest of the Bank but its gravity is lowered down a lot in view of the fact that there was no loss not say likelihood of any loss to the Bank or to anybody. No doubt, the workman could be said to be guilty of gress misconduct for acting prejudicial to the interest of the Bank but its gravity is reduced a fet in view of the aforesaid fact. The Enquiry Officer did not consider this aspect of the matter and similar was the position with the Disciplinary Authority who failed to take into consideration the aforesaid act. The departmental appeal preferred by the workman also resulted in discussal without caring to see as to whether there was any loss or likelihood of any loss to the Bank. The Competent Authority was impressed by the fact that the cheques in question amounted to about Ra. 50 lakhs while there was no loss even of a single penny.

Besides the above, the responsibility of the Officers was not considered at all and they were left out for no reasons. The dereliction of duty on the part of the Branch. Manager and the other Officers whose names have clearly come on record went un-punished at all. The cheques could not be cleared out without the signature of the Officer and this fact was not taken into consideration by the Disciplinary Authority. It appears that the westerian was punished to save the Officers of the Book. The Enquiry Officer was asked specifically on this point to which he stated that he was just required to go into the charge sheet against the workman and not against other Officers. It was a natural reply for the Enquiry Officer. In fact this was the duty of the General Manager/Zonal Manager to look into the facts in a right perspective to bring to books all the guilty Officers including the workman. The thrusting of the responsibility upon the shoulder of the workman alone is not justifiable. It amounts to discrimination which is not to be tolerated by the law. The Bank was not justified in punishing the worktoon with the Gual penalty of conceval from service. No doebt, the workman could not be absolved. of the charge totally but a lesser pusishment would have been proper for the Competent Authority in the instant case.

15. Considering the entire record, I conclude that the charge of misconduct was proved against the workman but the punishment of risnoval from service cannot be said to be commensurate with the charge of misconduct. The maxest of justice would be served if the workman is availed the punishment under Section 6(e) i.e. the workman is brought down to one lower stage in the scale of pay. The punishment awarded to the workman by the competent Authority is modified accordingly.

16. In view of the above, the punishment order is modified accordingly. The workman would not be entitled to back wages since there is no evidence on behalf of the workman for his non-comployment and the workman was not disqualified for future employment by the Bank.

17. The reference is disposed of accordingly.

JUSTICE CHANSHYAM DASS, Presiding Officer.

नई दिल्ली, १८ जुलाई, 2007

का.मा. 2153,—औद्योगिक विवाद अधिनिक्म, 1947 (1947 कः 14) की घारा 17 के अनुसरण में, केन्द्रीय सरकार बुनाईटेड कमर्किक्ल क्रेंक के प्रबंधतंत्र के संबद्ध नियोककों और उनके कर्मकारों × 454, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 1/2006) को प्रकाशिक करती है, जो केन्द्रीय सरकार को 17-7-2007 कि प्रपत हुआ बा।

> (पं. पल−12011/9*\$/*2005-आई कर (की-π)]. राजिन्द्र कुमार, डेस्क अधिकारी

i New Delhi, the 18th July, 2007

S.O. 1.353.—In Pursuance of Section 17 of the industrial Disputes Act, 1947 (14 of 1947), the Central Covernment hereby publishes the award (Ref. No. 1/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Kolkata as shown in the Amesaire in the Industrial Dispute between the management of United Commercial Bank and their workmen, received by the Central Government on 17-7-2007.

> [No. L-12011/95/2005-IR (B-11)] RAJINDER KUMAR, Desk Officer ANNEXERS

CENTRAL GOVERNMENT INDUSTRIAL TRUBUNAL AT KOLKAYA

Reference No. 01 at 2006 PARTIES:

Employers to relation to the management of United Commercial Bank

AND

Their workmen

PRESENT:

MR. JUSTICE C.P. MISHRA, Presiding Officer APPEARANCE:

On behalf of the Management : Mr. D.K. Parra, D.C.O.

of the Bank

On behalf of the Workmen : Mr. M. Bhowmick,

> Committee Member of West Bengal and Sikkim State Committee, UCO Bank Employees*

Association

State

West Bengal : Banking

Industry Dated: 11th July, 2007.

AWARD

By Oider No. 1.-12011/95/2005-IR (B-II) dated 19-12-2005 and Corrigendum of even number dated 2-3-2006 the Central Government in exercise of its powers. under Section 10 (1)(d) and (2A) of the Industrial Disputes. Act. 1947 referred the following dispute to this Tribural for adjudication:

"Whether the action of the management of United Commercial Bank by not considering Sh. Ashis Kumar Das for promotion from subordinate cadre to Clerical cadre as per clause 4.6 (II) of promotion policy settlement is just and legal ? If not, what relief the workman concerned is entitled to ?"

- When the case was called on 9-7-2007 none. appeared for either side. It appears from record that the representative of the workmen appeared before the Tribunal last on 9-8-2006 when he prayed for time to file statement of claims etc. in this case, but thereafter he did never appeared, not took any step whatsoever in the matter and the case was being adjourned from time to time giving them the opportunity to proceed with the matter. It is thus clear that the workmen are no longer interested to proceed with the matter.
- Since the workmen are not interested to proceed. in the present reference, this Tribunal has no other afternative but to dispose of the matter by passing a 'No-Dispute Award.
- A 'No Dispute' Award is accordingly passed and the reference is disposed of.

Kolksta

Dared : 11th July, 2007.

C. P. MISHRA, Presiding Officer नई दिल्ली, 18 जुलाई, 2007

का.आ. 2154.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल बैक ऑफ इंडिया के प्रवेधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अर्नाक्लम के पंचाट (संदर्भ संख्या (36/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-7-2007 को प्राप्त हुआ था।

> [सं. एक 12012/143/2002 आई आर (की-II)]. राजिन्द्र कुमार, हेस्क अधिकारी

New Delhi, the 18th July, 2007

2154.—In Pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government bereby publishes the award (Ref. No. 136/ 2006) of the Central Government Industrial Tribunalcom-Labour Court, Emakulum as shown in the Annexure in the locustrial Dispute between the management of Central Bank of India and their workmen, received by the Course Government on 17-7-2007.

> [No. I. 12012/143/2002-IR (B-II)] RAJINDER KLMAR, Desk Officer ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT ERNAKULAM

PRESENT:

SHRJ P.L. NORBERT, B.A., L.L.B., Presiding Officer (Wednesday the 11th day of July, 2007/ 20th Asadha, 1929)

L.D. 136 of 2006

(I. D. 79/2002 of Industrial Tribunal, Kotlam).

Workman . Smt. K. Vijayalekshmj,

TC No. 37/1745, S. P. Lane.

Wesi Nada.

Thiruvananthappram

Adv. Shri Manoj R. Nav.

Мераготон

-The Regional Manager. -Central Bank of India. P.B. No. 98. Gopal Building, Thyvila Road.

Thintyattanthapuram

Adv. Shri V. V. Sidharthan

AWARD

This is a reference made by Central Government under Section 10(1)(d) of Industrial Disputes Act, 1947 for adjudication. The reference is:

"Whether the action of the management of the Central Bank of India in denying the employment to Sint. K. Vijayalekshmi beyond 1997 is legal and justified?? If not, what relief the said workman is entitled to?"

2. The facts of the case in a mutabell are as follows:

According to the worker, Ms. K. Vijayalekshmi she was engaged as a penn on a temporary basis in a regular post of Rishimangalam Branch of Central Bank of India in 1987. She worked as such continuously till 1997. Though she was eligible to be absorbed, the management terminated her service without following the procedure under lodustrial Disputes Act for termination. The case of another similarly situated employee was considered by Industrial Tribunal, Alapuzha and an award was passed directing bank to absorb him. The Branch Manager had informed the Regional Office that the worker had satisfied the eligibility criteria for absorption. Hence the management has in he directed to reinstate the worker and absorb her in service with remspective effect and pay all consequential benefits.

- 3 According to the management the worker was never engaged in bank, much less for a continuous period of 240 days or 12 calendar months in one year. The bank also denies that she was in bank service from 1987 to 1997. It is stated that she might have been a casual labourer (tea server) in stuff carteen. Which is not connected with bank. She has no right either for employment or for absorption in bank. The Branch Manager's recommendation, even if true, will not confer any right on the worker for absorption. A decision rendered by Industrial Tribunal. Kollam in another case cannot apply to claimant. The claim is liable to be rejected.
- In the light of the above contentions the following points arise for consideration:
 - (1) Was the worker employed in Bank?
 - (2) Is the termination legal?

The evidence consists of the oral testimony of WW I and documentary evidence of Exts. W I to 8 on the side of worker and MWI and Exts. M I & M2 on the side of management.

5. Point No. (1):

The worker claims to have worked in Rishimangalam. Branch of Central Bank of India as temporary peop in a regular post from 1987 to 1997 continuously. Bank denies employment of any kind. According to them she would have been a cusual worker in staff canteen which is not run. by bank. It is an independent arrangement by staff. This is the contention in the written statement and in evidence. To bring bome the contention of the worker there is only her testimony and documents Exts.W 1 and W5. Ext. W1 is a copy of a letter written by Manager of Thiruvananthapuram. Branch to Regional Manager, wherein it is stated that 3 workers of Thiruvananthapuram II Branch and the worker. of Rishimungalam Branch have attained the eligibility norms. for absorption. The document is challenged by the management. According to bank the Branch Manager, Thirdvananthapuram had no authority to recommend the case of the worker who claims to have worked in a different. branch. The letter, Ext. W1 shows that the Branch Manager was recommending the case of temporary employees of Thiruvananthapuram Branch, Though it is written: "we also learn that Miss. Vijayalekshmi who is engaged on temporary basis at our Rishimangalam Branch has also attained the eligibility norms........". It is not known what was the authority of Branch Manager of Thiruvananthapuram Branch to recommend the case of another Branch. The letter was written on 23-8-1993. Exts. M1 series are Muster rolls of officers and staff or Rishimangalam Branch for the period January, 1987 to December, 1997.

They show that Shri Neelakantan was the Manager from December, 1991 to January 1996. Since the worker wanted the Muster Roll of August, 1993 itself, later that was also procluded on 21-12-2004 by the management, but not seen marked. That shows that Shri Neelakantan was the Branch Manager of Rishimangalam Branch in August, 1993 when Ext. W1 was written, But WW1 says that Ext. W1 is signed by Shri Sreenivasan and he was the Assistant Regional Manager, But Ext. W1 is signed by Branch Manager, Thiruvananthapuram and addressed to Regional Manager. There is no record to show that Shri Srcenivasan was Assistant Regional Manager, If he had written in his capacity as Assistant Regional Manager, why has he signed as Branch. Manager and to the address of Third varianthaporam Branch? As per Ext. W2 series circulars issued by Regional Manager. the Branch Managers were advised to forward details of temporary employees who had completed 180 days, showing all particulars shown in the format, to the Regional Office. No such details of the worker is seen sent from Rishinangalam Branch to Regional Office. If at all the candidature of Miss. Vijayalekshini was to be recommended. it was to be done by Branch Manager of Rishimangalam. Branch and not by Branch Manager of Thiruvasianthapuram. No details are available with regard to age and qualification. of Miss. Vijayalekshmi to know whether she was cligible for selection to the post of peon. A mere recommendation cannot substitute eligibility criteria or confer a right on the caudidate. The selection process is to be done in the Regional Office. and it is for them to ascertain whether eligibility norms are satisfied. Each Branch will have to furnish details to Regional. Office for determining the eligibility. That decision causes be taken by a Branch Manager. Moreover the worker (WW1). says that Thiruvananthapuram Branch may not have her employment details and it is not the concern of Thirusananthapuram Branch Manager to ascertain bed employment details and he camput know also.

- 6. Ext. W5 is a circular issued by union to its various units in which it is mentioned that five of temporary employees were chosen for the test for selection to the post of peon. One of the five is Miss. Vijayalekshmi. None of the office bearers of union is examined to test the correctness of the contents of Ext. W5. Therefore Ext. W5, a document of the union, cannot be taken as admission on the part of management regarding eligibility for selection as prop or temporary employment of Miss. Vijayalekshmi in bank.
- 7. No doubt daily wage Registers and P&L Registers for the period January to December. 1987 pertaining to casual workers were called for by the worker as per petition dated 23-11-2004. The management did not produce them, but filed an affidavit saying that they were not traceable and probably destroyed. It is avered in the affidavit that even as per RBI Roles, records need be preserved for a maximum period of 8 years only. It is mentioned in Ext. W 4

reply by Management to Assistant Labour Commissioner that normally miscellaneous records are kept only for a period of 5 years. The registers of the period of 1987 is asked for in the year 2004, after 17 years. Bank cannot be expected to preserve them so long. The industrial dispute itself was raised in 2002. How could the bank foresee the need for daily wager Registers of 1987 in a future litigation of 2002. Naturally those registers in all probability would have been destroyed. The case of management is probable. Therefore no adverse inference can be drawn against the management for non-production of records.

8. Neither in pleadings not in evidence the management has admitted employment of worker in bank, let alone continuous employment. Payments to casual or temporary workers should have been made as per vouchers. They are not called for and even if called for, would not be available at this distance of tinse. No co-worker (any substaff of bank) is examined to support worker's case. There are no records worth reliable to prove employment. Thus the worker has not been able to prove that she was employed (even if temporary or casual) in Rishimangalam Branch at any point of time.

Point No. (2):

- 9. The worker says that she was working continuously for a period of ten years and at any rate she has worked continuously for 240 days of 12 calendar months in an year and therefore she cannot be sent away barehanded and the bank is bound to comply with \$-25F of 1 D. Act. She also claims that she is entirled to be absorbed.
- 10. I have already found that in the wake of denial by bank that she was an employee of bank it was necessary for the worker to prove the factum of employment and that she has failed in that attempt. It follows that there can be no evidence regarding continuous service for 180 days as mentioned in Ext. W2 series circulars regarding temporary employees or 240 days as required in \$.25F read with \$.25B(2)(a)(ii) of 1.D. Act to call the alleged termination, illegal. But for Ext.W 1, there is absolutely no evidence regarding employment and continuous service. I have already found why Ext. W 1 cannot be accepted as proof of employment or continuous service. For brevity repetition is avoided. The burden is on the worker to prove continuous service. There is a cutena of decisions on that aspect and suffice it to refer to a few of them:
 - Rajusthan State Ganganagar S. Mills Ltd. v. State of Rajusthan (2004) 8 SCC 161.
 - Municipal Corpn.Faridabad v. Siri Niiwas (2004) 8 SCC 195.
 - H. U.D.A. v. Jagmal Singh 2006-111-1., L.J. 152.
 - Yeilatti R.M. v. Assistant Executive Engineer. 2006-1-1-1-1.442.

It is needless to say that the worker has not discharged her burden of proving continuous service and employment itself. Ext. W3 award of Industrial Tribunal Alupuzha referred by the worker is regarding another temporary employee and was set aside by Hon bie High Court by Ext. W6 jurigement and further considered in Writ Appeas judgement (Ext. W7) and temanded the matter to industrial Tribunal. Thereafter the same Tribunal passed at award in favour of worker Shri V. Christopher, But again that award is under challenge before High Court and the

memorandum of W.P. is Ext. M2. Hence the award of Industrial Tribunal in that case cannot be taken into consideration in this case as it has not become final. Moreover the evidence in that case differs from this case.

- 11. The case of ehsorption does not arise in this case as the claimant has not been able to show that she was working in a permanent vacancy, even if she was a casual or temporary worker. Para 53 of Secretary State of Kornataka v. Umadevi (2006) 48000 I has no bearing on the facts of the present case as she has not been able even to show that she is a "workman" within the definition of S-2(s) of LD. Act. Besides, the reference is regarding legality of termination and (einstatement to the post that she claims to have held. But no right whatseever has account to ber. Therefore she is neither entitled for reinstatement not for any other selief.
- 12. In the light of the reasons stared above I find that the action of the management in denying employment to Smt. K. Vijayalekshmi is legal and justified and she is not entitled for any relief. No cost. The award will take effect one month after its publication in the Official Gazette

Dictated to the Personal Assistant transcribed and typed by her, corrected and passed by me on this the 1 tith day of July, 2007.

P. L. NORBERT, Presiding Officer

APPENDIX

Witness for the Worker:

WW1—Smt. K. Vijayalekshnii. 10-8-2004.

Witness for the Management:

MW(-Shri C.J. Dominic, 9-11-2004.

Exhibits for the Worker:

- W1—Copy of Jetter duted 23.8.1993 issued by the Br. Manager of Central Bank of India to the Regional Office.
- W2 series Circulars (5 Nos.) issued by Regional (Iffice of Central Bank or India.
- W3—Certified copy of award dated 19-7-2000 in 1 [) 9/98 of I. T., Alapuzha
- W4—Photostar copy of letter No.TRO:PRS:2002-03 dated 29-5-2002 issued by Regional Office of Central Bank of India to ALC [C]
- WS--Photostat copy of strike notice dated 13-8-1991 issued by General Secretary, Control Bank of India Employees' Union.
- W6—Certified copy of judgement dated 16-6-2004 in O.P. 30611/2000 of Hon ble HC of Kerala.
- W7 Certified copy of judgement dated 13-9-2004 in in W.A. 1544/04 of Hon ble HC of Keraja.
- W8— Certified copy of judgement dated 7-9-2004 in W A.1563/04 of Hon'ble HC of Kerala.

Exhibits for the Management;

- M ? series—Certified copies of Musici Rolls of Central Bank of India (46 pages).
- M2—Copy of Memorandum of Writ Petition dated 20-6-2005 numbered as WP(Cy/18525/05 before Hon'ble HC of Kerala.

नई दिल्ली, 18 जुलाई, 2007

का.अ. 2155.—औद्योगिक क्वियर अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार विजया के के प्रवंधरंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विजाद में केन्द्रीय सरकार औद्योगिक अधिकरण श्रम न्यायालय, अनिकृत्सम के पंचाट (संदर्भ संख्या 278/2006) को प्रकारित करती है, जो केन्द्रीय सरकार को 17 7-2007 को प्राप्त हुआ था।

(सं. एल-12012/111/95-आईआर (ची-11)) राजिन्द्र कुप्पर, डेस्क अधिकारी

New Delhi, the 18th/fuly, 2007

S.O. 2155.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.278/2006) of the Central Government Industrial Tribuna) cum-Labour Court. Emakulam as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Vijaya Bank and there workman, which was received by the Central Government on 17-7-2007.

[No.L-12012/111/95-IR (B-II)]

RAJINDER KUMAR, Desk Officer

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM LABOUR COURT, ERNAKULAM

PRESENT:

Shri P.L. Norbert, B.A., L.I., B., Presiding Officer

(Tuesday the 3rd day of July, 2007, 12th Ashada 1929)

1.D. 278/2006

(LD. 12/1996 of Labour Court, Ernakulem)

Workman/Union

: The Joint Secretary Vijaya Bank Workers Organization 283, Pycrofts Road, Triplicane Chennai -5

Adv. C. Anil Kumer.

Management

. The Assistant General Manager Vijaya Bank, Head Office 41/2, M.Q. Road Bangalore -I

Adv. Shri C.P. Sudhakara Prasad

AWARD

This is a reference made by Central Government under Section 10 ($\hat{\Gamma}$) (d) of Industrial Disputes Act, 1947 for adjudication. The reference is :

"Whether the action of the management of Vijaya Bank, Bangalore in imposing the punishment of stoppage of two increments permanently on Shri P. Anil Kumar, Clerk vide their order dated 11-4-92 is legal and justified? If not, to what relief is the workman entitled?"

The facts of the case in brief are as follows:—

Shri P. Anil Kumar was a clerk of Vijaya Bank at Thirtivalla Branch. While so he was charge-sheeted on the allegation that on 1-6-1990 he contrived with S/Shri T.S. Asholi Kumar and G.D. Nair (both clerks) in attempting to defraud Bank of Baroda, Thirtyvalla Branch to the time of Rs. 1,30,000. He was suspended from service. An investigation was conducted by two senior officers of the bank. In pursuance to the investigation report, the management conducted a domestic enquiry. In the enquiry the workman was found guilty of the charge of acting prejudicial to the interest of the bank and three increments were stopped with cumulative effect. In appeal filed by the workman the finding of Enquiry Officer was confirmed, but the punishment was modified to stoppage of two increments. with comulative effect. Aggrieved by that an industrial dispute was raised by the workman through union and hence the reference.

According to the union, the Enquiry Officer had violated the principles of natural justice, no properopportunity was given to the workman to adduce evidence. and he was denied opportunity to cross-examine management witnesses. The Enquiry Officer relied on materials collected behind the back of the workman. The Enquiry Officer had adopted a partisan approach in the enquiry. There are no materials to find the guilt of the workman. The Enquiry Officer has not properly appreciated. the facts and evidence in the enquiry. The punishment imposed is shockingly disproportionate to the charges. There was inordinate delay if issuing charge-sheet to the workman. He was not allowed to peruse relevant documents. for submitting reply to the charges. The management was aware that the workman had no role in the incident. But the management wanted to implicate the workman. The Disciplinary Authority has not given personal hearing on the proposed punishment. The appeal was dismissed without proper application of mind by the Appellate Authority. Hence the workman is entitled to be reinstated. with all consequential benefits.

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 According to the management the charge-sheeted. employee instead of submitting a reply to the charge-sheet requested to provide him certain documents without mentioning their relevance. There is no provision for supplying documents for the purpose of filing reply to charge-sheet. For the purpose of denying the charges it is not necessary to peruse documents. He was given sofficiem opportunity to defend himself in the enquiry. He was defended!by a union representative. He was given opportunity to cross-examine management witnesses and to adduce defence evidence. However he produced only one document which was marked and he himself gave. statement. The Disciplinary Authority had given the workman opportunity to make submission on the proposed. punishment. However the workman made a written submission. But he did not turn up for personal hearing. The Enquiry Officer on the basis of the materials on record came to a conflusion that the workman was guilty of the charge of acting prejudicial to the interest of the bank and hence the Disciplinary Authority imposed punishment of stoppage of three increments with cumulative effect. The Appellate Authority on proper appreciation of the facts and evidence recorded by the Enquiry Officer, concurred with the findings of the Enquiry Officer, However taking into consideration the rotality of the circumstances the punishment was reduced to stoppage of two increments with cumulative effect. The punishment is proportionate to the gravity of the offence. The attempt to defraud a banking institution cannot be treated lightly. It will have demoralizing effect on other employees of the bank and affects the reputation of the bank. No interference in the matter of punishment or findings, is called for.

- 5. In the light of the above contentions the following points arise for consideration:
 - (1) Whether the finding is sustainable?
- (2) Whether the punishment is proportionate to the misconduct? ¹

The evidence consists of the oral testimony of Enquiry Officer (MWI) and documentary evidence of Exts. MI to M9 on the side of management. It appears that when evidence was adduced before the State Labour Court the enquiry file (Bxt. MI) did not contain all the documents marked by the Enquiry Officer during enquiry. Hence Exts. M2 to 9 documents were produced in the Labour Court as additional documents and they were marked.

6. Point No. (1):

Shri P. Anil Kumar, the workman in this case, entered service of Vijaya Bank, Thiruvalla Branch

on 15-6-1989 and he worked there till 6-9-1990. The charge is:

"The action of the CSE in retaining the cheque leaf. No. 484240 illegally, passing it on to Sri Ashok Kumar, clerk knowingly for depositing the same in the clearing on 1-6-90 by filling in the cheque for Rs. 1.30,000 after forging the signature of the account holder and thereby facilitated the perpetration of the attempted fraud by Sri F.S. Ashok Kumar, clerk on Bank of Baroda, Tiruvalla branch are acts prejudicial to the interest of the bank, constituting gross mis-conduct under sub-clause (J) of clause 19.5 of Chapter XIX of the Bipartite Septement, 1966."

The proceedings of enquiry, Ext. M2 reveals that though the enquiry officer had decided to commence the enquiry. on 8-S-1991, the workman had sought an adjournment on the ground that the Defence Representative (Joint Secretary) of the Union) was away in Madras. The enquiry was adjourned to 10-5-1991. Again the workman sought adjournment on the ground that DR was unwell. Hence the enquiry was again adjourned to 10-8-1991. The enquiry was conducted on that day and on 12-8-1991. Four witnesses were examined and 14 documents were marked as Exts. M 1 to M 14 on the side of management. On the defence side the workman himself gave evidence and one document was marked as Ext. D 1. All the management witnesses were criss examined by the Defence Representative. The proceedings sheets also reveal that copies of focuments relied on by the management were given on time to the workman. Thus the Enquiry Officer. had complied with the principles of natural justice. The contention of the union that adequate opportunity was not given for defence evidence and for cross-examination. of management witnesses, is not correct. So also the contention of the union that copies of documents were not furnished to the workman, is equally incorrect. Though these contentions were taken up in the claim. statement when the matter came up for hearing the union did not insist for consideration of the validity of enquiry as a preliminary issue. Hence it is sufficient to say that the Enquiry Officer had followed the procedure for domestic enquiry and complied with the principles of natural justice.

7. The incident alleged happed at Thiruvalla Branch of Vijaya Bank. A cheque book having one cheque leaf of Bank of Baroda. Thiruvalla Branch and belonging to Shri G. Radhakrishnan was forgotten and left in the counter of Thiruvalla Branch of Vijaya Bank, while he had been to Vijaya Bank on 15-6-1989 to deposit a cheque of a co-employee of National Insurance Company where he was

working. He came to know of the loss of the cheque leaf only up 1.6.1990 when Back of Baroda informed him that his cheque was presented for encashment of Rs. 1,30,000 on 1-6-1990. On the same day he was called to Vijaya Bank. by the Branch Manager to ascendin the facts. Thereafter be had given list. MS statement to the investigating officers of Vijaya Bank. He says in Ext. M5 that he had been to Vijaya Bank, Thiruvalla Branch on 15-6-1989 with cheque No.747450 for Rs.2767 ps. 01 drawn on Bank of Baroda of Thiruvalla Branch for crediting to the S/B account of Smt. B. Kamalakshiamma with Vijaya Bank, Thiruvalla Branch. At that time he had by oversight left a cheque book having one cheque leaf in the counter of Vijaya Bank. He had not noticed the mistake until he was informed by Bunk of Baroda on 1-6-1990 that someone had presented his cheque for encashment of Rs. 1,30,000.

Ext. M4 is investigation report of two senior officers, one of whom was examined as MW I before the Enquiry Officer. The investigation report confirms the fact that Shri G. Radhakrishnan had been to the Vijaya Bank on 15-6-1989 for the purpose of depositing a cheque for collection and he had left a cheque leaf in the counter of Vijaya Bank. The reports also says that the cheque leaf came to the possession of the workman who was the clerk in the clearing section on 15-6-1989. The cheque was filled up showing the workman as drawee and signature of customer forged by a co-employee of workman. Shri Ashok Kumar and sent it back to the workman through a sub-stall (Shri John Varghese) on 1-6-1990. The workman after perusing the cheque sent it to clearing section through the same sub-staff. Shri D.G. Nair was the clerk in clearing section on 1-6-1990. He sent it for collection to Bank of Baroda. The cheque was returned as the signature of the customer was found forged. MW1, one of the investigating officers reports that the workman was in the clearing section. on 15-6-1989 when Shri G. Radhakrishnan bad approached the bank for depositing the cheque. The details of that cheque of Smt. B. Kamalakshiamma was entered in the clearing register and clearing scrolt of Vijaya Bank, Throvalla Branch by the workman. When the workman gave evidence on the defence side he admitted that he was in the clearing section on 15-6-1989. But he denies having any role in the incident or having come in possession of the cheque in question, MW2 is the Branch Manager of Vijaya Bank. He came to iotow of the alleged transaction after the incident. MW3 is JND Collector of Vijaya Bank, Shri John Varghese. According to him on 1-6-1990 ShruT.S. Ashik Kuntar had handed over a cheque to him to be entrusted to the workman. Shri Anil Kumar. He handed over the cheque to Shri Anil Kumar, After 10 minutes Shri Anil Kumar told him. to give the cheque to clearing section. He obeyed the instruction and placed it in the clearing section where Shri D.G. Nair was the clearing clerk. But at that moment Shri D.G. Nair was not in the seat. It is relevant to note that the incriminating statements of MW3 were not challenged in cross-examination of witness. The cross examination was on some other aspects. Just one question was put to the witness regarding incriminating circumstances and that was, whether MW3 had beard Shri Anil Kumar insisting Shri D.G. Nair to send the cheque for collection. The statement of MW3 that Shri Ashok Kumar had sent the cheque through MW3 to workman and after 10 minutes the workman had sem the cheque through MW3 to the clearing section is not questioned by the defence. It tantamounts to admission on the part of the defence. It was argued by the learned counsel for the union that the management was foisting a false case against the workman. However the union was not able to allege any motive on the part of either the Branch Manager or MW3 for implicating the workman in the incident. The allegation that MW3 is an obedient servant of the Branch Manager becomes irrelevant when the defence has nothing to say about the motive of MW2 or MW3 to incriminate the workman. The union has no case that either Branch Manager or the sub-staff (MW3) has any ill-will towards workman or enmity with him. When there is allegation and evidence regarding the role of Shri Ashok Kumar in the incidem it was not necessary for the management to incriminate the workman. MW 4 is the Assistant Branch Manager of Vijaya Bank, Thiruvalla branch, According to him he came to know about the fraudulent transaction around 12 45 p.m. on 1-6-1990 when he received a call from Bank of Baroda. He says that the pay-in-slip of cheque for Rs. 2767 ps. 01 dated 15-6-1989 deposited by Shri G. Radhakrishnan is signed by him. That means Shri G. Radhakrishnan had been to bank to deposit a cheque for Rs. 2767.01 on 15-6-1989. It is true that the Ecquiry Officer has found that there is no evidence to show that the workman had taken the disputed cheque (Ext. M8) from the counter of clearing section on 15-6-1989. However the Enquiry Officer found that the cheque was handed over to the workman by Shri Ashok Kumar through MW3 and it was returned to clearing section by the workman through MW3. On the same day the clearing clerk, D.G. Nair had forwarded the cheque for collection to Bank of Baroda. Thus the evidence and circumstance in the enquiry reveal that Shri G. Radhakrishnan had been to bank on 15-6-1989 and he had by mistake left a cheque leaf in the counter. That came into the hands of one of the employees of the bank which was utilized for presenting it and trying to encash an amount of Rs. 1 20,000. The attempt to encash the amount failed as the Bank of Barada on verification of signature refused to clear the cheque and returned it. It was submitted by the learned counsel for the union that the management as well as employees of bank were aware that it was only a joke of the staff of the bank and not intended to defraud anyone. The cheque of the customer

is not a toy for the staff to play. Had there been sufficient amount in the customer's account and had the clearing clerk of Bank of Baroda by mistake had not verified the signature, the cheque would have been cleared and the transaction would have assumed serious proportions. The bank employees who know well the value of a cheque and the consequences in case of loss of a obeque by a customer, cannot be licard to say that they were playing a joke with a blank cheque of a customer. Flad it been a joke they would have seen that the cheque was not sent for collection to another back, Having sent it for elearance to another bank and having found it unsuccessful, they now turn round and say that it was a joke. But so far as the customer is concerned his nor a joke. The workman cannot escape the that that he was aware that he was the drawer of the cheque, no doubt written by a co-employee, But when it reached him he should have stopped the obeque and would have retained it with him either for returning it to the customer or to Bank of Baroda or for entrusting it to his own bank manager. On the other hand it was given to the clearing section for collection. The fact that signature was put by Saci Ashok Kumar without trying to imitate the signature of customer Shri G. Radhakrishnan, will not lessen the gravity of the misconduct of the workman for having sent it for collection with all the false entries and knowing them to be false.

9 In the light of the above circumstances the findings of the Finquiry Officer that the workman was aware of the disputed transaction and instead of retaining it, he had sent the cheque knowing it to be not genuine, to the creasing section for collection, do not call for any interference.

Point No. (2):

The punishment imposed by the Disciplinary Authority is stoppage of 3 increments with cumulative effect. This was reduced to stoppage of 2 increments with constitutive effect by the Appellate Authority, According to the union the punishment is shockingly disproportionate to the gravity of the charge. The misconduct proved is a major missionilust failting within Clause 19.5 (j) of 1st Bipartic Settlement. The punishment for gross misconduct is provided in Clause 19.6 of the Bipartite Settlement. It is the discretion of the management to impose any of the penishments under clause 19.6. The punishment being not one falling it's 11-A of Industrial Disputes Act it is not for this court to interfere with. The position is supported by the decision in bidian Aluminium Co. Ltd. v. Labour Court. Ranchi 1991 —I-L., J 328 at 333 (Pat D.B.). Hence no. alteration in the matter of punishment can be made by this court. Besides, the punishment cannot be said to be disproportionate to the misconduct.

11. In the result, an award is passed finding that action of the management of Vijaya Bank in imposing the punishment of stoppage of two increments with cumulative effect on Shri P. Anil Kumar, Clerk vide their order dated 11-4-92, is legal and justified. The workman is not entitled for any relief. No cost. The award will take effect one month after its publication in the official Gazette.

(Dictated to the Personal Assistant, transcribed and typed by her corrected and passed by me on this the 3rd day of July, 2007).

P.L. NORBERT, Presiding Officer

APPENDIX

Witness fot the Workman/Union:

Nil.

Witness for the Management:

MW1-

Exhibits for the Workman/Union;

NiL

Exhibits for the Management.

MI -- Domestic enquiry file.

M2 Proceedings of Enquiry.

M3 Statement of JND Collector given to Branch Manager on 4-6-1900.

M4 — Investigating Report (Pages 1 to 30).

M5— Annexone 1 Statement of Shri G, Radhakrishnan before investigating afficers on 15-6-1990.

M6-- Statement of Shri Sivarakakrishnan, Assat. Branch Manager submitted to investigating officers on 16 6 1990.

M7- Statement of Shri K.M. Mathew. Branch Manager before investigating officers on 16-6-1990.

M8 Cheque dated 1-6-1990.

M9-- Return memo of cheque dated 1,6,1990,

नई दिस्स्ती, 18 असाई, 2007

कर.सा. 2356.—औद्धीपक विधाद अधिनका, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार देना बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विधाद में केन्द्रीय सरकार औद्धीगिक अधिकरण अप न्यायालय नं.-2, मुम्बई के पंचाट (संदर्ध संख्या 2/112/2005) को प्रकाशित करतो है, जो-केन्द्रीय सरकार को 16-7-2007 को प्राप्त हआ था।

> [सं एल-12012/75/2001-आई आर (बी-II)] यजिन्द्र कुमार, हेस्क अधिकारी

New Delhi, the 18th July, 2007

S.O. 2156.—In Pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 2/112/2005) of the Central Government Industrial Tribunal-cum-Labour Court, No. 2, Mumbai as shown in the Appeare in the Industrial Dispute between the employer in relation the management of Dena Bank, and their workman, which was received by the Central Government on 16-7-2007.

(No. L-12012/75/2001-IR (B-II)) RAJINDER KUMAR, Desk Öffset ANNEXLIRE

REFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT A.A. Lad, Presiding Officer

Reference No. CG/T-2/112 of 2005 (Old Ref. CG/T-2/63 of 2001)

Employers in relation to the Management of Dena Bank

The Regional Manager,

Dena Bank

Dena Corporate Centre,

Personnel Department

C-10, B-Block, Bandra Kurla Complex.

Bandra (E)

Mumbai-400 051

AND

Their Workmen

Mr. Saaishkumar S. Nirankari

C-5, Satsang Bharati Society

Govind Nagar, Malad (E)

Mumbai-400097.

APPEARANCES

For the Employer

Ms. Nandini Menon

Advocate

For the Workmen

Ms. Kunda N. Samani

Advocate

Mumbai, dated 5th June, 2007

AWARD

The Government of India, Ministry of Labour, by alsorder No. 1-12012/75/2001 [IR (B-I)] dated 2/8-5-2001 in exercise of the powers conferred by clause (d) of subsection (i) and sub-section 2(A) of Section 10 of the lodustrial Disputes Act, 1947 have referred the following dispute to this Tribunal for adjudication:—

"Whether the action of the management of Dena Bank, Mumbai in terminating the services of Shri

- Satishkumar S. Nirankari, Sub-staff w.e.f. 31-5-1999 and non-regularisation in Barak's service in Sub-staff cadre is legal and justified? If not, what relief the workman, Sh. Satishkumar S. Nirankari is critified?"
- Claim Statement is filed by concerned workman at Ex-6 justifying the demand made by him regarding his termination dated 31-5-1999.
- 3. Saio is challenged by the first party by filing reply Ex-12 justifying its action of termination challenged in the reference.
- 4. Issues are framed at Ex-14 and Award was passed by my predecessor on 9-5-2002 which was challenged before Houble Bombay High Court. Houble Bombay High Court by order dated 12-7-2005 disposed of Writ Petition No. 2579 of 2002 and sent matter back to this Tribunal for considering the date of entitlement of second party for confirmation in the employment.
- Meanwhile Union by purshis Ex. 47 informed that concerned workman is taken in the employment as per the order of Hoo'ble High Court and as such second party does not want to proceed with the reference. Hence the order:

Order

Vide Ex-47 this reference is disposed of.

Dated 5-6-2007

A.A. LAD, Presiding Officer

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2,

Reference No. CGTT-2/112 of 2005 (Old Ref. CGTT-2/63 of 2001)

Between

Dena Bank.......First Party

and

S.S. Nivankari.....Second Party

MAY IT PLEASE THE HONBLE TRIBUNAL

The Second Party workman, through the Advocate, had addressed a letter to the Advocate for the First Party, inquiring whether the case could by settled and if the workman could be regularised in the services of the 1st Party w.e.f. 2-5-2001 (date of reference of dispute to this Hon'ble Tribunal);

By a letter dated 12-4-2007, the first party informed their Advocate that the Bank was agreeable in principal to regularise the services of the 2nd party w.c.f. 2001 (2-5-2001). A copy of the Bank's letter dated 12-4-2007 is annexed bereto.

An order may be passed accordingly.

Mumbai

Sd/-

5-6-2007

(Advocate for the 1st Party)

Order It is prayed by both &: Sd/-

admitted by 2nd party workman. So it is disposed

(Advocate for the 2nd Party).
Sd/-

(S. Nirankari) Workman

of accordingly.
Sd.J.
(A.A. Lad)
Presiding Officer

5-6-07

नई दिल्ली, 18 जुलाई, 2007

का.आ. 2157.—औधोगिक विकाद अधिनियम, 1947 (1947 की 14) की धारा 37 जे अनुसरण में, केन्द्रीय सरकार स्टेट मैंक ऑफ इण्डिया के प्रवंधतंत्र को संबद्ध नियोजकों उत्तर उनके कर्मकारों के नीच, अनुसंक्ष में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चेनई के पंचाट (संदर्भ संख्या 258/2004) को प्रकाशित करती है, जो जेन्द्रीय सरकार को 18-7-2007 को प्राप्त हुआ था .

> [सं. एल-12012/445/1998-आई आर (बी. I.)] अनय कुमार, देस्क अधिकारी

New Delhi, the 18th July, 2007

S.O. 2157.—In Pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 258/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Amexure, in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 18-7-2007.

(No. 1,-12012/445/1998-IR (B-I)) AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT, INDUSTRIAL TRIBUNAL CLIM-LABOUR COURT, CHENNAL

Wednesday, the 31st January, 2007

Present: K. Jayaraman (Presiding Officer)
INDUSTRIAL DISPUTE No. 258/2004

This is all about the control of the second

[Principal Labour Court CGID No.201/99]

(In the snatter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of State Bank of India and their workmen).

BETWEEN

Sri M.Velayutham

I Party/Potitioner

AND

The Assistant General Manager,

State Bank of India.

Z.O. Chennai.

II Partyl Management

APPEARANCE:

For the Petitioner

SriV.S.Ekambaram,

Authorised representative.

For the Management :

M/s. K.Veeramani.

Advocates

AWARD

The Central Government, Ministry of Lahour vide Order No.1,-12012/445/98-JR(B-1) dated 10-03-1999 has referred this dispute earlier to the Tamil Nadu Principal Lahour Court, Chennai and the said Lahour Court has taken the dispute on its fife as CGID No.201/99 and issued notices to both parties. Even though both sides entered appearance the I Party has not filed Claim Statement and be has not appeared before the Principal Lahour Court. After the constitution of this CGIT-Cum-Lahour Court, the said

dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as LD.No.258/2004 and issued notices to both parties. In spite of adjourning the case for veveral hearings, the Petitioner has not filed Claim Statement. Hence, the Petitioner was called absent and set ex-parte.

- 2 The Schedule mentioned in that order is as follows.—

 Whether the demand of the workman Shri M.Velay wham, wait list No.698 for restoring the wait list of temporary messengers in the establishment of
- State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?
- On behalf of the Respondent memo of objection/. Counter Statement was filed, wherein it is alleged that reference made by the Govt, for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/ absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped. from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of LD. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bons fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down, in seniority. Due to the business exigency, the Respondent/Bank engaged the temperary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was esponsed by State Bank of India Staff Federation which resulted in five settlements dated 17-14-87, 16-07-88, 07-10-88, 9-1-91 and 30-7-96. The said settlements became. subject matter of contribution proceedings and minutes were drawn under Section 18(3) of 1.0). Act, in terms thereof, the Peritioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary. couplayees and the Pentioner was wait listed as candidate. No. 698 in waitlist of Zonal Office, Chennai, So far 357 wait listed temporary candidates, out of 744 waitlisted temporary employees were permanently appointed by Respondent/Bank, It is false to allege that the Potitioner. worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process. in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn amund, and claim. appointment. Such of those temporary employees who were: appointed were engaged for more number of days and hence, they were appointed. Under the settlement. employees were categorised as A, B and C. Considering. their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous. block of 36 calendar months and under category (C) the

temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per Clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31,3.97 for filling up. vacancies which were to arise upto 31-12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the atoresaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 698 he was not appointed. The said settlements were honafide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is fiable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements. and operated throughout the country. The Tamil Nadu-Industrial Establishment (Conferment of Permanent Status) to Workman) Act, 1981 does not apply to Respondent/ Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitione: was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As persettlements, vacancies upto 31-12-94 were filled up against the waite list of temporary employees and vacancies for 1995-96 lsas to be filled up against the wait list drawn for appointment of daily wages/ casual labour. Further, for circle of Chennai wait list of daily wages was not finalized. and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

- 4 In these circumstances, the points for my consideration are:
- (i) "Whether the demand of the Petitioner in-Wait List No. 698 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?
 - (ii) "To what relief the Petitioner is emitted?"

Point No. 1:

5. When the marrer was taken up for enquiry, it is reported by the special representative of the Petitioner that he has no instruction from the Petitioner and he is not appearing for the Petitioner and hence, the Petitioner was called absent and set exparte. Since the Petitioner neither appeared before this Court nor filed the Claim Statement to substantiate his claim, I find the Petitioner is not interested in pursuing this dispute and hence, he is not entitled to any relief. No Costs.

6. Thus, the reference is disposed of accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January., 2007.)

K. JAYARAMAN, Presiding Officer

नई दिल्ली, 18 जुलाई, 2007

कर.क. 2158,—जीवोंगिक विकार अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंग्डिया के प्रशंकतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुसंध में निर्देश औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चेन्नई के पंचाट (संदर्भ संख्या 99/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार की 18-7-2007 को प्राप्त हुआ था।

[सं एल-12012/303/1998-आई आर (बी-I)] अबय कुमार, डेस्क अधिकारी

New Delhi, the 18th July, 2007

S.O. 2158.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government bereby publishes the award (Ref. No. 99/2004) of the Central Government Industrial Tribunal-cum-Labour Court. Chemia as shown in the Annexure in the Industrial Dispute between the management of State Bank of India, and their workmen, received by the Central Government on 18-7-2007.

[No. L. 12012/303/1998-TR (B-J)] AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL COVERNMENT INDUSTRIAL-CUM-LABOUR COURT, CHENNAL

Wednesday, the 31st January, 2007

PRESENT:

K. Jayaraman, Presiding Officer

Industrial Dispute No. 99/2004

(Principal Labour Court CGIT No. 42/99)

(in the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

Between:

M.Manivel (deceased) : 1Party/Petitioner

And

The Assistant General Manager, : Il Party/Management State Bank of India, Region-I, Trithy.

Арреалике:

For the Petitioner: Sri V.S. Ekambaram,

Authorised Representative

For the Management: M/s. V. Sundar Anandan,

Advocates

AWARD

The Central Government, Ministry of Labour vide Order No. 1,-12012/303/98-IR(B-1) dated 2-2-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court. Chemeai and the said Labour Court has taken the dispute on its file as CGID No. 42/99 and issued notices to both parties. But, the Petitioner has not filed the Claim Statement before the Tamil Nadu Principal Labour Court. After the constitution of this CGIT cum Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as 1.D. No. 99/2004 and notices were issued to both parties and both parties entered appearance and filed their Claim Statement and Counter Statement respectively.

2. The Schedule mentioned in that nuler is as follows:

"Whether the demand of the workman Shri M.Manivel, wait list No.337 for restoring the wait list of temporary messengers in the establishment of State Hank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3 The allegations of the Petitioner in the Claim Statement are briefly as follows:

The Peririoner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis in Kattur ADB branch from 2-1-88. The Petitioner was orally informed that his services. were no mare required. The non-employment of the Petitioner and others became subject-matter before Supreme Court in the form of Writ Petitinn filed by State Bank Employees' Union in Writ Petition No. \$42/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter filed a copy of settlement under section 18(1) reached between management of State Bank or India and All India State Bank of India Staff Federation. and the semigraph is with regard to absorption of Class IV. temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen. under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted has application in the prescribed format through Branch Manager of the Kattur ADB branch. He was called for an interview by a Committee appointed by Respondent/ Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class TV employee. From 2-1-88 the Petitioner has been working as a temporary messenger and some times performing work in other branches also. While

working on comparary basis in Trichy branch, another the advertisement by Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the Franch informed the Petitioner (trailly on 31-3-97 that his services are not required any more and be need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the concitiation ended in failure, the matter was referred to this Tribunal for adjudication

4 As against this, the Respondent in its Counter Statement alleged that reference made by the Government for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Pesitiones was not authorised. The Petitioner is estopped from making claim as per Claim. Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of 1D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not benefule and made with ulterior motive. The Petitioner concealed the material facts. that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business evogency, the Respondent/ Bank engaged the temporary employees performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their ease. was expoused by State Bank of India Staff Federation which resulted in five settlements dated 37-11-57, 16-7-88, 7-10 82, 9-1-91 and 30-7-96. The said selllements became subject mutter of conciliation proceedings and minutes were drawn under section 18(3). of LD. Act. In terms thereof, the Petationer was considered. for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wort fisted as candidate No. 337 in, wait list of Zonal Office, Trichy So for 212 wait listed temporary condidates, out of 652 was listed temporary employees were permanently appointed by Respondent/Bank, h is faise to allege that the Peririquer worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when a grose. When the Petitioner having submined to selection process in terms of settlements drawn as per retrenchment provisions referred to above. cannot furn around and claim appointment. Such of those temporary employees who were appointed were engaged. for more number of days and hence, they were appointed. Under the settlement, employees were categorised as $A_s B$ and C. Considering their temporary service and subject to other eligibility criteria, under caregory (A) the temporary employees who were engaged for 240 days were to be considered and under cotegory (B) the temporary employees who have completed 270 days aggregate. temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees. who have completed 30 days aggregate temporary service. in any calendar year after 1-7-75 or minimum 70 days

aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per Clause 7, the length of temporary service was to be considered for seniority in the wait fist and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 652 wait listed candidates, 212 temporary employees were appointed and since the Petitioner was want listed at 337 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level scrilements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisaliction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temperary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages. easual labour. Further, for circle of Chennai wait fist of daily wages was not finalized and honce not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria Set out by Respondent/Bank for selection of candidate for appointment in the post of messenger and other class JV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of

vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with alterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petirioner prays that an award may be passed in his favour.

- 6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under section 18(1) of the Act and not under section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.
- 7. In these circumstances, the points for my consideration are:
 - (i) "Whether the demand of the Peritioner in Wait List No. 337 for restoring the wart list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"
 - (ii) "To what relief the Petitioner is entitled?"

Point No.1 & 2:-

- 8. When the matter was pending before this Tribunal at the time of evidence, it is reported that the Petitioner disd and it is posted for taking steps. But, the LRs of the Petitioner base not taken any steps to implead them as LRs in this dispute from 6-12-2004. They have also not filed any memo stating when the Petitioner died or what steps they have taken to implead them in this dispute.
- 9. The reference made in this dispute is "Whether the demand of the workman for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified and for consequential appointment thereon as temporary messenger. It is only a personal right claimed by the Petitioner and since it cannot be said that the LRs of the Petitioner have no personal right to claim employment in the Respondent/Management. I find even in the event of reference being answered in favour of the deceased Petitioner, this petition cannot be allowed. Therefore, Hind the claim is abatted and thus, it is dismissed but without any costs.
 - Thus the reference is disposed of accordingly.

(Dictated to the P.A. transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

न्हं दिल्ली, 18 जुलाई, 2007

का.आ. 2159.— श्रीहोगिक विवाद अधिनियम. 1947 (१९४२) का 14) को भारा १२ के अनुसरण में, केन्द्रीय सरकार स्टेट वैंक ऑफ इंडिया के प्रश्नेष्ठ में संबद्ध नियंजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चेनाई के पंचाट (संदर्भ संख्या 74/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-07-2007 को प्राप्त हुआ था।

[सं. एल-12012/107/1998-आई. अस्. (बी-1)] अजय कुमार, डेस्क अधिकारी

New Delhi, the 18th July, 2007

S.O. 2159.— In pursuance of Section 17 of the Industrial Disputes Act. 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 74/2004) of the Central Govt, Industrial Tribunal com-Labour Court. Chemial as shown in the Annexure in the Industrial Dispute Isoprocen the Management of State Bank of India and their workmen, received by the Central Government on 18-07-2007.

¡No. I.-10212/107/1998-JR (B-D) AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAL

Wednesday, the 34st January, 2007

PRESENT

K. JAYARAMAN, Presiding Officer Industrial Dispute No. 74/2004

(15 meipal Labour Court CGED No. 161/99]

(in the crafter of the dispute for adjudication under clause (ii) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Manageorient of State Bank of India and their workmen)

BETWEEN

Sri A. Mony

] Party/Petitioner

AND

The Assistant General Manager.: Il Party/Management State Bank of India, Z.O.

Madurei.

APPEARANCE

For the Petitioner

Sn V.S. Ekambarum.

Authorised Representative.

For the Management

Mr. D. Mukundan, Advocates

AWARD

The Control Government, Ministry of Labour vide Order No. 1: 12012/107/98-IR(B-f) dated 05-02-1999 has referred this dispute earlier to the Tamil Nado Principal Labour Critic. Chemia and the said Labour Court has taken the dispute on its file as CGID No. 161A9 and issued notices to both parties. Both sides entered appearance and siled their ciain statement and Counter Statement respectively. After the constitution of this CGIT Cum-Labour Court, the said dispute has been transferred to this Tribunal for Adjudy-ation and this Tribunal has numbered it as 1.0. No. 74/2004.

2. The Schedule mentioned in that order is as tollows

"Whether the demand of the workman Shri A. Mony, want list No. 375 for restoring the wair list of temperary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified." If we to what rehefithe said workman is entitled?"

 The allegations of the Petitioner in the Claim Statement are briefly as follows:—

The Petitioner was sponsured by Employment Exchange for the post of sub-spaff in Class by cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Kuzhithural branch from 16-03-1984. The Pentioner was smally informed than his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Count in the form of Writ Peritioner Island by State Bank Employees' Union in Writ Petition No. 542/37 which was taken up by the Supreme Court. The Respondent/ Bank, in addition to its counter filed a copy of settlement under section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Pederation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the seatement was under consideration once again and they classified the workmen under three categories namely A. B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements The Petitioner also submitted his application in the prescribed format through Branch Manager of the Kuzhithurai branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee, From 36 03 1984, the Petitioner has been working as a temporary messenger and some times performing work in other branches also. While working on temporary basis in Kurhithurai branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Peritioner was working as such, the Manager of the branch informed the Petitioner utally no 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner taised a dispute with regard to his

non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Government to reconsider the reference and the Potitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in Jue course. The Respondent/Bank took up an anreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement montioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the sentlements are repugnant to Section 25G & 25H of the LD. Act. The remination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unitar labour practice. The wait list suffers serious promitties and it is not based on strict seniority and without any resionale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/ Bank with all attendant benefits.

 As against this, the Respondent in its Counter Statement alleged that reference made by the Government for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of 1. D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior mutive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/ Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India

Staff Federation which resulted in five settlements dated 17-11-87, 16-07-88, 07-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under section 18(3) of LD. Act. in terms thereof, the Petititoner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 375 in waitlist of Zonal Office, Madurai. So far 219 wait listed temporary diskildates, out of 492 waitlisted, temporary employees week permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temperary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous black of 36 calendar months were to be considered. As per Clause 7, the length of temporary service was to be considered for sensority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 492 wait fisted candidates, 219 temperary employees were appointed and since the Petitioner was wait listed at 375 he was not appointed. The said sentements were bonsfide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has on jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upon 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chemnai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

- In the additional claim statement, the Peritioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Pentioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right on-honed in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with alterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.
- 6. Again, the Petitioner fitted a rejoinder to the Counter Statement of the Respondent, wherein it is stared all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9+91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.
- In these circumstances, the points for my consideration are—
 - (i) "Whether the demand of the Petitioner in Wast List No. 375 for restoring the wait list of temporary

messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger's justified?"

(ii) "To what relief the Peritioner is entitled?"

Point Nos. 1 & 2 ;-

- 8. When the matter was taken up for hearing, it is reported by the representative of the Petitioner that he is not appearing for the Pentioner and the Petitioner also has not appeared before this Court for further proceedings and hence, the Petitioner was called absent and set expanse.
- 9. In this case, the Petitioner alleged that he was appointed by Respondent/Bank during 1984 and worked as a temporary messenger and during the year 1986-87 be was disengaged from service and again he was engaged as a temporary messenger and all of a sudden, on 31-3-97 he was terminated from service without any notice or notice. of compensation. Since he has continuously worked for more than 240 days in a continuous period of 12 calendar months, he is entitled to the benefits of Section 25F of the t.D. Art. But, no evidence was adduced on behalf of the Petitioner nor produced any document to establish his contention. The Petitioner has not appeared before this Embunal to substantiate his claim. As such, I find the allegations of the Petitioner are not established before this Tribunal, Hence, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.
- 10. Thus, the reference is disposed of accordingly. (Divisited to the P.A. transcribed and typed by him, corrected and pronounced by mo an the apon court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer নই বিংগী, IN খলাই, 2007

का,जा. 2160.— औश्लीत्क विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, के दीय मरकार सेन्ट्रल रेलने के प्रवंधतंत्र के शंबद्ध नियोजकों और उनके कंमेंकारों के बीच, अनुबंध में निर्देष्ट औद्योगिक विवाद में कंन्दीय सरकार औद्योगिक अधिकरण सं 11 मुख्यई के पंचाट (सर्दर्भ संख्या 86/2001) को प्रकाशित कम्ली है, जो केन्दीय सरकार को 18-7-2007 को प्राप्त हुआ था.

> सि एल-२:011/14/2001-आई आर. (बीन्:)] अंत्रय कुंमार, डेस्क अधिकारी

New Delhi, the 18th July, 2007.

S.O. 2160 — In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 86/2001) of the Central Govt. Industrial Tribunal-cum-Labour Court-II. Mumbai as shown in the Annexure in the Industrial Dispute between the Management of Central Railway and their workmen, received by the Central Government on 18-07, 2007.

[No. L-43917/4/2001 IR (B-b)] AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNALNO.2, MUMBAL PRESENT

A. A. LAD, Presiding Officer

Reference No. CG1T-2/86 of 2001

Employers in relation to the Management of Central Railway, Mumbai

The Chief Workshop Manager Central Railway Parel, Mumbui-400 012.

AND

Their Workmen

The Secretary, Indian Railway Technical Staff
Association

 Mahavir Yadav Chuwl Gundawali Hill, Nagardas Road, Andheri (E). Mumbui-400 069.

APPEARANCES

For the Employer

: Mr. D.G. Chougade Representative

For the Workmen

 Mr. A.B. Mishra Representative

Mumbai, Dated 26th April, 2007.

AWARD

The Government of India, Ministry of Labour by its Order No. L-41011/14/2001/IR/(B-I) did. 20-06-2001 in exercise of the powers conferred by clause (d) of subsection (1) and sub-section 2(A) of Section 10 of the industrial Disputes Act. 1947 have referred the following dispute to tais Tribunal for adjudication:

"Whether the action of the management of the Chief Workshop Manager, Central Railway, Parel in not paying the wages for 2 days i.e. on 21-09-99 and 22-09-09 in respect of around 4000 workers is justified? If not, what relief the workmen are entitled?"

- 2. Claim statement is filed by the Representative of the workmen at Ex-8 stating that, the workmen involved in the reference—have been denied their wages by Management of 21-09-1999 of Second shift of general shift and wages of first and second half on 21-01-99. Management also denied wages of these workmen of all thifts of 22-09-99 without any reason or without holding enquiry or without obtaining explanation from the concerned workmen.
- On those days, these workmen were on duty. The principle followed by management of 'no work no pay' in not giving wages of above dates and period has no logic.
- 4. These workmen are mainly engaged in maintenance and repair of keomotives of various types. Their activities are carried out in shift round the clock, 95% of them are of labourer category working with Parel Workshop.
- According to Second Party, on 21-09-99 all these workmen joined in their respective duties in general shift at about 10.30 hrs. Some unknown persons entered in to the

workshop and stopped work of these workmen. The members of management were available in relevant time. but nobody enquired who were those persons and why they stopped work. Even same thing took place on 22-09-99. Since Management did not interfered or protect. the workmen by calling security staff or police, some took shelter inside the workshop and some left workplace just to protect themselves from these goonday who entered unauthorisedly and without knowledge of these workmen. As a result of that, these workmen unable to punch their entry card vis-a-vis mark their presence. Even they unable to attend their regular work and without considering atl that, management one sided decided to deduct the wages of the workmen of above dates and shifts by applying principle of 'no work no pay'. So it is prayed that, First party he directed to pay the wages of these 4000 workmen. of Parel workshop and set aside impugned action of the first party with necessary reliefs.

- This is objected by first party by filling reply at Ex-90 stating that, since these 4000 workmen did not work on those relevant periods on those dates, they are not entitled to wages of those days and period. Without any reason. they stopped work. Since there was no work, principle M'no work no pay' was followed by management regarding above period. When there was no work, the workmen involved are not entitled to wages of that period. It is alleged that, member of first party did not turn up on 21-09-99 and 22-09-99. Even they did not punch their card. Even they did not aprily in advance for absentism and intimated their absence. Their act rather supports the said trespassers and without their belp, trespassers cannot enter the workshop and disturb the working of First party. There is: no provision to appoint security for the workers or call police for protection when 4000 workmen who were there. What is the necessity to have protection to them? Infact these workmen consented the activities of the trespassers. allowed them to do it and enjoyed the said disturbance by remaining absent from duty or by not doing work. So it is submitted that, decision taken by it of not giving wages of these days involved in the reference was just proper and does not require any inserference.
- In view of above pleading my Ld. Predecessor framed issues at Ex. 21 which I answer as follows:

ख्यित

Findings

- Whether the action of the management of the Chief Workshop Manager, Central Railway, Parel in not paying the wages for two days i.e. on 21-09-99 and 22-09-99 in respect of around 4000 workers is justified.
- What relief the workmen are entitled to?

Does not survive

REASONS

lasacs Nos. 1 & 2 :

 By raising dispute of non-payment of wages of 21st Sept. 1999 and 22nd Sept. 1999 of about 4000 workmen by the first party. Second party made out case that, these workmen were not responsible for not doing work since sufficient protection was not given by management nor any of the management's person protected these workmen and guided them in that situation. Whereas stand of the first party is that, these workmen were responsible for that entire scene which occurred on those days. Even most of them were absent. Who were present did not work. They did not work on those days in the above period and it was just and proper to apply principle of 'no work no pay'.

9. To support that Second party examined B. M. Shukla by filing affidavit at Ex-22. Against that no evidence led by first party. Written arguments are submitted by second party at Ex. 35 with some citations and by first party at Ex. 36.

The evidence available of Shukla for second party. is concerned, filled at Ex-2, will find be state that, on 21-09-99 tie learnt that fact on telephone regarding serious. unrest in Paret Workshop on account of interruption of trespassers and when he reached there he met officer of Association as well as visited workshop along with the officers of first party. He noted that, there was fear on the face of the workmen due to terror created by unknown. persons. He also noted that, punching booth was closed and there was no atmosphere of normal nature. He noted that, management's persons were not present. He noted that, agitations were going on mainty on entrance gate and they were preventing staff to enter into workshop. Even he noted same position on 22-09-99. According to him, workmen are not responsible for that. It is suggested that, there is no access to the oursiders in the workshop. It was also suggested that, workmen purposely remained absent on 21st and 22nd September, 1999 and did not work.

11. From this evidence it is clear that, none of the concerned workmen is examined by the second party to bring real picture on record. It is alleged that, there was tense atmosphere and some trespassers entered in the workshop and created terror. It is to be noted that, about, 4000 workings were there, it is not pointed out how, some of the persons can enter and create tense atmosphere when 4000 workers were present. It is matter of record that, all these werd of labour category. When labourers are which were in sprength of about 4000 and when it is not proved that, there is no easy access to the outsiders question. arise how few people can command over situation against 4000 workers? No just and proper explanation is given by second party by leading evidence. They admit that, punching machine was not working and workmen did not work or atjend their work. It means that, there was no work. on those days during the above period and even it is not case of second party. When there was no work and when no just and proper explanation came from second party, when there were in all strength of about 4000, question arises how much they can be believed?

The case made out by them that, no management person came there, advised them, in my considered view

that does not arise, as mostly they were workers strength of 4000. Some of them may be supervisor and some of them may be of different category working there. Pact is that, there was no work on those days

12. The question is raised by the second party questioning the action of the first party saying that. without holding enquiry or enquiring with the workmen. how action is sustainable? In my considered view in peculiar circumstance which occurred in two days and that to in particular period of those two days how invite. management to question all 4000 and enquire with them. and then take action? According to me, it was not feasible. as well as possible. It is matter of record that, about 4000 workmen were working in that said workshop. It was period. of two days. Work was not done on those two days. No any other serious action of discipline was taken. So action taken of stopping wages of those days if taken in that scenario, I am of the view that, it was just and proper. It is: not case of the second party that, partiality was shown by first party and some were paid on those days and some were not, it is not case that, some favour was shown to some employees and harsh and extreme action was taken. by the first party against some group.

First party simply did not pay wages of those days for which they did not work and it was made applicable to all who were on roll on those days.

Number of catations referred by second party i.e. copy of order passed in civil appeal No. 5047 of 1998. Citation published in 1990 (IV) SCC 744, & Citation published in AIR. 1967 SC 1269 as well as citation published. in 1994 SCC (L & S) page (320, Citation published in 1980. SCC (L & S) page 145, are on different footing. In civil appeal of 5047 of 1998, where there was the question of granting special leave and other privileges and it was under consideration. In case of Bank of India V/s. Kelevala and Ors. (1990 IV SCC page 744) there was point of non-payment. of wages though workmen were present on work. In our case most of the workmen were absent on those days and that point is not disputed by second party. The citation of Bhagwan Shukla Vs. Union of India published in 1994 SCC. (L & S) 1230 is also on different fonting as in that case. there was a question of payment of probation which was wrongly fixed.

14. If we consider all these coupled with decision taken by first party, which was taken in general without making any discrimination and partiality, which was universe against all pertaining to that period, I am of the view that, said action does not require any interference. So I answer the above issues to that effect and passes following order:—

ORDER

Reference is rejected with no order as to costs.

Date: 26-04-2007

A. A. LAD, Presiding Officer

मई दिल्ली, 19 जुलाई, 2007

कर,आ, 2161,—औरओपक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार विभाग के प्रसंपतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक क्वियाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, गुषहाटी के पंचाद (संदर्भ संख्या 11/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-7-2007 को प्राप्त बूजा था।

[सं. एल-400:2/98/2005-आई आर (डोय्)]

मुरेन्द्र सिंह देस्क अधिकारी

New Dethi, the 19th July, 2007

S.O. 2161.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.11/2006) of the Central Government Industrial Tribunal-com (about Court, Gowahati as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Telecom Department and their workman, which was received by the Central Government on 1947-2007.

[No. L-40012/98/2005-IR (DU)] SURENDRA SINGH, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT TRIBUNAL-CUM-LABOUR COURT, GUWAHATL ASSAM. PRESENT

Shri H.A. Huzarika, Presiding Officer, CGIT-cum-Labour Court. Gewahati.

Reference Case No. 11 of 2006 In the matter of an Industrial Dispute between:—

The Management of BSNL, Silebar

Vice

Their Workman Sri Kulendra Sinha.

APPEARANCES

For the Workman : Mr. M.K. Jain, Advocate For the Management : Mr. D. Sur, Advocate.

Date of Award: 06-07-2007

AWARD

The Government of India, Ministry of Labour, New Delhi, vide its order No. L-40012/98/2005-IR (DU) referred this Industrial Dispute arose between the employers in relation to the Management of the BSNL, Silchar, and their Workman, Sri Kulendra Sinha to adjudicate and to puss an swant on the strength of powers conferred by Clause(d) of Sub-Section (1) and Sub-Section (2A) of Section 10 of the Industrial Dispute Act, 1947(14 of 1947) on the basis of the following Schedule.

SCHEDULE

"Whether the demand of Shri Kulendra Sinha for reinstatement of his services with the management of BSNL, Silchar, SSA is legal and justified? If so, to what relief the workman is entitled and from which date?"

- On being appeared by both the parties the proceeding is proceeded here for disposal being Numbered 11/2006 as per Procedure.
- 3. The case of the workman Sri Kulendra Sinha in brief that he was in Department of Telecommunication under BSNL and worked against the Post of Master Roll and Duily Rated Mazdur and he worked for the development of Net work of BSNL for the installation work and maintenance of the development work. But the BSNL retrenched him without assigning any reason and no opportunity was given to him at the time of retrenciment. The retrenchment was illegal, arbitrary, unjustified and had in law. He received no retrenchment Notice in writing and in lieu of Notice the justified amount was not paid to the workman.
- 4. That the workman produced the working days list before the authority but the authority paid no beed to lit and the Department of Telecommunication introduced a Scheme for regularization of Casual Labours who worked continuously for 240 days. But though he worked the prescribed period of 240 days continuously he was not regularized. The workman claimed that his petioton is not time barred as he regularly kept contact with the authority for regularization.
- 5. That the BSNL authority, Government of India, New Delhi vide letter No. 269-10/89/STN dated 7-11-89 whereby it is banned the engagement/employment of casual labourer from 1988. But the petitioner/claimant was working as daily wage Mazdoon in the Telecommunication Department and the payment has been made on AGC-17.
- 6. That for many many years the petitioner/claimant continuously keeping contact with the authority and submitted all documents but it remains without response. That the original work order given by the Sub-Inspector (Phone) Mr. Namar Ali submitted to Labour Commissioner.
- 7. That the Department of Telecommunication, New Delhi introduced a Scheme for regularization of Casual Labourers under the grant of Temporary Status and regularization Scheme of DOT 1989 who worked 240 days in a year. But authority deprived him from his claim.
- That under Article 38 of the Constitution be is entitled for security of service and promotion and welfere.
- 9. Under the present circumstances the authority ought to have been reinstate and regularize the workman as DOT/BSNI, employee. That the Casual Labourer or Daily Wagers and temporary employee cunnot be terminated without any reason assigning to them.
- That the workman claims that he is entitled to have benefits w/s 25-G, 25-H of the 1.D. Act, 1947.

Under the circumstances the workman prayed to pass order to reinstate him and regularize him with back wages.

- 11. The case of the Management BSNL, DOT in brief that the workman never worked in service or employment in BSNL, DOT. The RSNE has no liability to regularize the Applicant labourer.
- 12. That the DOT. New Delhi *vide* No. 269-4/93-STN II (PT) dated 12-02-1999 the authority of all DOT Officers

for engagement of casual labourers as well as the power of all Accounts Officers to pay any such casual fabourer is withdrawn. That the departmental development works are done through the contractor on contract basis. That so called dispute raised by the Applicant after 15/16 years and is time barred.

13. That the Management of BSNI, attended the contiliation meeting held by the Assistant-Labour Commissioner (Central) and pointed out all such points and argument about all the points against the workman.

Under the circumstances the Management peayed to dismiss the claim of the alleged workman.

- 14. I have carefully gone through the documents submitted by both the parties. The Workman Sri Kulendra Sinha remained absent on the date fixed for evidence and addaced no evidence and the evidence of the Management recorded my parte. The reason behind is that the learned Advocate Mr. M.K. Jain refused to represent the workman. The evidence of the Management witness Sri Bijon Behari Nath is recorded ex-pairte who has categorically stated that he does not know the workman. The Management witness is doclined to be cross examined by the Adoveate Mr. M.K. Jain. Advocate for the workman who was present at the time of recording the evidence of the Management. For ends of justice, on careful scrutiny of the documents in the record I find the workman has not called any document to prove that he was engaged by the Management as casual. labourer. What I find there is not acceptable evidence for the weakness to accept him as easual Jabourer under BSNL. The workman is not emitted for any relief. What I find the asiaged workman Sri Kulendra Sinha is not entitled for any terior. In the result, the claim of the alleged workman Sri Kalendra Sinha is reported,
- Propore the Award and send a to the authority accepted as per procedure confidentially and immediately.

H.A. HAZARIKA, Presiding Officer

नइ दिल्ली, १५ जुलाई, 2007

का.ओ. 2162.— आँद्योगिक विलाद अधिनियम, 1947 (1947) को १४ । की बारा 17 के अनुसरण में, केन्द्रीय सरकार दूर शंबार विभाग के प्रबंधतंत्र के सबद्ध नियोजकों और उनके कर्मकर्ण के बेचि, अनुवध में निर्दिष्ट ओद्यागिक विलाद में केन्द्रीय सरकार औद्यागिक अधिकरण श्रम क्यायालय भूताहारों के मंचाट (संदर्भ संख्या 10/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-7-2007 को प्रापा वुटन श्र

> (स. एल. 400) 2/97/2005 - आई आर (क्षेत्र यू.)) सुरेन्द्र कुमार, इंस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2162.— In pursuance of Section 17 of the Incustrizi Disputes Act. 1947 (44 of 1947), the Central Government hereby publishes the award (Ref. No 10/2006) of the Central Government industrial Tribunal-cum-Labour Court. Government as shown in the Amexure in the Industrial Physics between the employers in relation to the management of Tesecom Department and their workman.

which was received by the Central Government on 19-7-2007.

[No. L-40012/97/2005-IR (DU)] SURENDRA SINGH, Desk Officer ANNEXTRE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CHM-LABOUR COURT, GUWAHATI, ASSAM

PRESENT

Shri H.A. Hazarika. Presiding Officer. CGIT-com-Labour Court. Gowahata.

Reference Case No. 10 of 2006

In the matter of an Industrial Dispute between:—

The Management of BSNI , Silehar

 \mathbf{v}_{∞}

Their Workman Sri Chandro Sekhar Sinha.

APPEARANCES

For the Workman : Mr. M.K. Jain, Advocate For the Management : Mr. D. Sur, Advocate.

Date of Award: 06407-2007.

AWARD

i. The Government of India, Minispy of Labour, New Delhi, vide its order No.1.-40012/97/2005-IR (Ddf) referred this Industrial Dispute arese between the employers in relation to the Management of the BSNL. Siletian, and their Workman. Sri Chandra Sekhar Sinha to adjusticate and to pass an award on the sciength of powers conferred by Clause(d) of Sub-Section (1) and Sub-Section (2A) of Section (0 of the Industrial Dispute Act, 1947/14 of 1947) on the basis of the following Schedule.

SCHEDULE

"Whether the demond of San Chindra Sekhar Sinha for reinstatement of his services with the management of BSNL, Silchar, SSA is legal and justified? If so, to what relief the workman is emitted and from which date?"

- On being appeared by both the pursues the proceeding is proceeded here for disposal being Nombered 10/2006 as per Procedure
- 3. The case of the workman Sri Chandra Sekhar Sinha in brief that he was in Department of Telecommunication under BSNL and worked against the Post of Master Roll and Daily Rated Mazdur and he worked for the development of Net work of BSNL for the installation work and maintenance of the development work. But the BSNL retrenched him without assigning any reason and no opportunity was given to him at the time of retrenchment, The retrenchment was illegal, arbitrary, unjustified and bad in law. He received no retrenchment Notice in writing and in heu of Notice the justified amount was not paid to the workman.

- 4. That the workman produced the working days list before the authority but the authority paid no heed to it and the Department of Telecommunication introduced a Scheme for regularization of Casual Labours who worked continuously for 240 days. But though he worked the prescribed period of 240 days continuously he was not regularized. The workman claimed that his petition is not time barred as he regularly kept contact with the authority for regularization.
- 5. That the BSNL authority; Government of India, New Deihi vide letter No. 269-10/89/STN dated 7-11-89 whereby it is bauned the engagement/employment of Casual labourer from 1988. But the petitioner/claimant was working as daily wage Mazzloor in the Telecommunication Department and the payment has been made on AGC-17.
- 6. That for many many years the petitioner/claimant continuously keeping contact with the authority and submitted all documents but it remains without response. That the original work order given by the Sub-Inspector (phone) Mr. Namar Ali submitted to Labour Commissioner.
- 7. That the Department of Telecommunication, New Delhi introduced a Scheme for regularization of Casual Labourers under the grant of Temporary Status and regularization Scheme of DOT 1989 who worked 240 days that year. But authority deprived him from this claim.
- That under Articles 38 of the Constitution be is entitled for security of service and promotion and weffare.
- 9. Under the present circumstances the authority ought to have been reinstate and regularize the workman as DOT/BSNL employee. That the Casual Labourer or Daily Wagers and Temporary employee can not be terminated without any reason assigning to them.
- 10. That the workman claim that he is entitled to have benefit u/s, 25-G, 25-H of the 1.D. Act, 1947.

Under the circumstances the workman prayed to pass order to reinstate him and regularize him with back wages.

- 11 The case of the Management BSNL, DOT in brief that the workman never worked in service or employment in BSNL, DOT. The BSNL has no liability to regularized the Applicant labourer.
- 12. That the DOT, New Delhi vide No. 269-4/93-STN II (Ft) dated 12-2-1999 the authority of all DOT Officers for engagement of casual labourers as well as the power of all Acrounts Officers to pay any such casual labourer is withdrawn. That the departmental development works are done through the contractor on contract basis. That so called dispute raised by the Applicant after 15/16 years and is time barred.
- 13. That the Management of BSNI, strended the conciliation meeting held by the Assistant Labour Commissioner (Central) and pointed out all such points and regument about all the points against the workman.

Under the circumstances the Management prayed to nismissthe claim of the alleged workman.

14. On careful scruting of the evidence I find the workman. Sri Chandra Sekhar Sinha claimed that he was engaged as Casual Labourer for 240 days in a year and as such, he is entitled for regularization and to acquire the status of Casual Labourer. In Support of his contention he submitted a document Ext. A wherein it is reflected that he worked for 578 days only in 3 years. That document as he said is received from one Namar Ali countersigned by one Sub-Divisional Officer, Phones, Silchar Sub-Division, But to prove this document he has not called original document. such as, Attendance Register, Payment register, Etc. This document is not authentic on the ground that it has got onissue No. from the Office. This can not be said document. issued on official duty. This must be proved with official record and as per procedure. Admittedly he has deposed in in his cross-examination that he was assured for regularization but he is not regularized by the BSNL. But there is no appointment letter or any other document that he has acquired the status of a casual labourer to get benefit. under the Scheme of Status of Casual Labourer which goes like this:

"5. Temporary Status

(i) Temporary Status would be conferred on all the casual labourers currently-employed and who have rendered a continuous service of at least one year, out of which they must have been engaged on work for a period of 240 days (206 days in the case of offices observing five-day week). Such casual labourers will be designated as Temporary Mazdoor."

Further I find the matter is inordinately delayed and as per Annexure-VI submitted by the Management as the matter is time barred. The Management witness Lachman Lal Bhar deposed that the workman is not the workman of BSNL. On scrutiny I find the workman Sri Chandra Sekhar Sinha entirely failed to show that he worked as easual labourer unde the BSNL to get benefit under the Scheme. In the result, I find the alleged workman Sri Chandra Sekhar Sinha is not entitled to for any relief. In the result, the claim of the workman Sri Chandra Sekhar Sinha is not entitled to for any relief. In the result, the claim

 Prepare the award and send it to the authority concerned as per procedure confidentially and immediately.

H.A. HAZARIKA, Presiding Officer

नई दिल्ली, 19 जुलाई, 2007

कर.आ. 2163.—औरहेगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार विभाग के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय गुवाहाटों के पंच्छट (संदर्भ संख्या 9/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-7-2007 की प्राप्त हुआ था।

> (सं. एल. 400) 2/96/2(05) आई आर (डोब्) | सुरेन्द्र कुमार, डेस्क ऑधकारी

New Delhi, the 19th July, 2007

S.O. 2163.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 9/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Government as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Telecom Department and their workman, which was received by the Central Government on 19 7-2007.

[No.1, 40012/96/2005-JR (DL)]

SURENDRASINGH, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GUWAHATI, ASSAM

PRESENT

Shri H.A. Hatarika, Presiding Officer, CGIT-cum Labour Court, Guwahati.

Reference Case No. 09 of 2006

In the matter of an Inchastrial Dispute between:---

The Management of BSNL, Silchar.

Vis

Their Worketan Sri Nurul Amin Laskar.

APPEARANCES

For the Workman

Mr. M.K. Jain, Advocate

For the Management :

Mr. D. Sur Advocate.

Date of Award: 6-7-07

AWARD

1. The Government of India, Ministry of Labour, New Delhi, vide its order No. L-40012/96/2005-IR (DU) referred this bichestrial Dispute arose between the employers in relation to the Management of the BSNL, Silchar, and their Workman, Sn Nurul Amin Laskar to adjudicate and to pass an award on the strength of powers conferred by Chase(d) of sub-section (1) and sub-section (2A) of Section 10 of the Indiastrial Dispute Act, 1947(14 of 1947) on the basis of the following Schedule.

SCHEDULE

"Whether the demand of Shri Nurul Amin Laskar for reinstalement of his services with the management of BSNL, Silchar, SSA is legal and justified? If so, to what relief the workman is entitled and from which date?"

- On being appeared by both the parties the proceeding is proceeded here for disposal being Numbered 9/2006 as per Procedure.
- The case of the workman Sri Nurul Amin Laskar in brief that he was in department of Telecommunication.

under SBNI, and worked against the Post of Master Roll and Daily Rated Muzdur and he worked for the development of Net work of SBNL for the installation work and maintenance of the development work. But the SBNL retrenched him without assigning any reason and no opportunity was given to him at the time of retrenchment. The retrenchment was illegal, arbitrary, impustitled and had in law. He received no retrenchment Notice in writing and in lieu of Notice the justified amount was not paid to the workman.

- 4. That the workman produced the working days list before the authority but the authority paid no heed in it and the Department of Telecommunication introduced a Scheme for regularization of Casual Labours who worked continuously for 240 days. But though he worked the prescribed period of 240 days continuously he was not regularized. The workman claimed that his petition is not time barred as he regularly kept contact with the authority for regularization.
- 5. That the BSNI, authority, Government of India, New Dolhi vida letter No. 269-10/89/STN dated 7-11-89 whereby it is banned the engagement/employment of Casual labourer from 1988. But the petitioner/claimant was working as daily wage Mazdour in the Telecommunication Department and the payment has been made on AGC-12.
- 6 That for many many years the petitioner/claimant continuously keeping contact with the authority and sobmitted all documents but it remains without response. That the original work order given by the Sub-Inspector (phone) Mr. Namar Ali submitted to Labour Commissioner.
- 7. That the Department of Telecommunication, New Delha introduced a Scheme for regularization of Cusual Labourers under the grant of Temporary Status and regularization Scheme of DOT 1989 who worked 240 days in a year. But authority deprived him from his claim.
- That under Articles 38 of the Constitution he is entitled for security of service and promotion and wetfare.
- 9. Under the present discussistances the authority ought to have been reinstate and regularize the workman as DOT/BSNL employee. That the Casual Labourer or Daily Wagers and temporary employee can not be terminated without any reason assigning to them.
- That the workman claim that he is entitled to have benefit w/s 25-G, 25-I] of the I.D. Act. 1947.

Under the circumstances the workman prayed to pass order to reinstate him and regularize him with back wages.

- 11. The case of the Management BSNL, DOT in brief that the workman never worked in service or employment in BSNL, DOT. The BSNL has no liability to regularized the Applicant labourer.
- 12. That the DOT, New Delhi vide No. 269-4-93 STN II (Pt) 12-2-1999 the authority of all DOT Officers for engagement of casual labourers as well as the power of all

Accounts Officers to pay any such casual labourer is withdrawn. That the departmental development works are done through the contractor on contact basis. That so called dispute ruised by the Applicant after 15/16 years and is time barred.

13. That the Management of BSNL attended the conciliation meeting held by the Assistant Labour Commissioner (Central) and pointed out all such points and argument about all the points against the workman.

Under the circumstances the Management prayed to dismiss the claim of the alleged workman.

14. On careful scruting of the evidence I find the workman Sri Nucul Amin Laskar claimed that he was engaged as Casual Labourer for 240 days in a year and as such, he is entitled for regularization and to acquire the stams of Casual Labourer. In Support of his contention he submitted a document Ext. A wherein it is reflected that he worked for 393 days only in 3 years. That document as he said is received from one Namar Ali countersigned by one Sub-Divisional Officer, Phones, Sächer Sub-Division, But to prove this document he has not called any original doucment such as, Attendance Register, Psyment register. are. This doucment is not authentic on the ground that if has got no issue No. from the Officer. This can not be said document issued on official duty. This must be proved with official record and as per procedure. Admittedly be has deposed in his cross-examination that he was assured for regularization but he is not regularized by the BSNL. But there is no appointment letter or any other document that he has acquired the status of a casual labourer to get benefit under the Scheme of Status of Casual Labourer which goes like this:

75. Temporary Status

(i) Temporary Status would be conferred on all the casual labourers currently employed and who have rendered a continuous service of at least one year, out of which they must have been engaged on work for a period of 240 days (206 days in the case of offices observing five-day week). Such casual labourers will be designated as Temporary Mazdoor."

Further I find the matter is inordinately delayed and as per Armexure-VI submitted by the Management as the matter is time barred. The Management witness Lachman Lat Bhar deposed that the workman is not the workman of BSNL. On scretiny I find the workman Sri Nurul Arnin Laskar entirely falied to show that he worked as casual labourer under the BSNL to get benefit under the Scheme. In the result, I find the afleged workman Sri Nurul Amin Laskar is not entirled to for any relief. In the result, the claim of the workman Sri Nurul Amin Laskar is rejected.

 Prepare the award and send it to the authority concerned as per procedure confidentially and immediately.

H.A. HAZARIKA, Presiding Officer

र्मा दिल्ली, 19 भूलाई, 2007

का, अह. 2164.— बौद्धीगक विवाद अधिनवम, 1947 (1947 को 14) की धारा 17 के अनुसरक में, केन्द्रीय सरकार दूर संचार विचान के प्रविधतंत्र के संबद्ध वियोजकों और उनके कर्मकारों के बीच, अनुबंध में जिर्देष्ट और्धीगक विवाद में केन्द्रीय सरकार और्धोगक अधिकरण/क्षम न्यायालय, गुनहाटी के पंचट (संदर्भ संख्या 8/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-7-2007 को प्राप्त हुआ था।

> (स. एल-400) 2/95/2005-आई आर (डीय्)] सुरेन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2164.— In pursuance of Section (7 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 8/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Gowahati as abown in the Annexure in the Industrial Dispute between the employers in relation to the management of Telecom Department and their workman, which was received by the Central Government on 19-7-2007.

[No.1, 40012/95/2005-FR (DU)] SURFNDRASINGH, Desk Officer

ANNEXLIKE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TREBUNAL-CUM-LABOUR COURT, GUWAHATI, ASSAM

PRESENT:

Shri H.A. Hazarika, Presiding Officer, CGTI-cum Labour Court. Gureabati

Reference Case No. 66 of 2066

In the matter of an Industrial Dispute between:— The Management of BSNL, Sikhar

Vrs.

Their Workman Sri Gopal Singh

APPEARANCES:

For the Workman :

Mr. M.K. Jain, Advocate

For the Management :

Mr. D. Sur, Advocate.

Date of Award: 05-07-07

AWARD

1. The Government of India, Ministry of Labour. New Delhi, vide its order No. L-40012/95/2005 IR (DU) referred this Industrial Dispute stose between the employers in relation to the Management of the BSNL, Silchar, and their Workman. Sri Gonal Sinha to adjudicate and to pass an award on the strength of powers conferred by Clause(d) of sub-section (1) and Sub-Section (2A) of Section 10 of the Industrial Dispute Act, 1947(14 of 1947) on the basis of the following Schedule.

SCHEDULE

"Whether the demand of Shri Gopal Sinha for reinstatement of his services with the management of BSNL, Silchar, SSA is legal and justified? If so, to what relief the workman is entitled and from which date."

- On being appeared by both the parties the proceeding is proceeded here for disposal being Numbered 08/2006 as per Procedure.
- 3. The case of the workman Sri Gopal Sinham brief that he was in department of Telecommunication under BSNL and worked against the Post of Master Roll and Daily Rated Mazdur and he worked for the development of Network of BSNL for the installation work and maintenance of the development work. But the BSNL retrenched him without assigning any reason and no opportunity was given to him at the time of retrenchment. The actronchment was Elegal, athatrary, unjustified and bad in law, He received no extrenchment Notice in writing and in lieu of Notice the fustifier appount was not paid to the workman.
- 4. That the workman produced the working days had before the authority but the authority paid no head to it and the Department of Telecommunication introduced a Scheme let regularization of Casual Labours who worked continuously for 240 days. But though he worked the prescribed period of 240 days continuously he was not regularized. The workman claimed that his petition is not time buried as he regularly kept contact with the actionate corregularization.
- 5. That the BSN1, authority, Government of India, New Delhi vide letter No. 269-10/89/STN dated 7-11-89 whereby it is hanned the engagement/employment of Casual labourer from 1988. But the petitioner/elaint-int was working as daily wage Mazdoor in the Telecommunication Department and the payment has been made on AGC+17.
- 6. That for many many year the peritioner/c annual continuously keeping contact with the authority and submitted all documents but it remains without response. That the original work order given by the Sub Inspector (phose) Mr. Namar Ali submitted to Labour Commissioner.
- 7. That the Department of Telecommunication. New Dethi introduced a Scheme for regularization of Casual Labourers under the grapt of Temporary Status and regularization Scheme of DOT 1989 who worked 240 days in a year. But authority deprived him from his claim.
- S. That under Articles 38 of the Constitution be is entitled for security of service and promotion and welfare.

- 9. Under the present circumstances the authority ought to have been reinstate and regularize the workman as DOT/BSNL employee. That the Casual Labourer or Daily Wagers and temporary employee can not be terminated without any reason assigning to them.
- 10.That the workman claim that he is entitled to have benefit U/s 25-G. 25-H of the LD. Act, 1947.

Under the circumstances the wer/man prayed to pass order to suinstate him and regularize him with back wages.

- 31. The tase of the Management BSNL, DOT in brief that the workman never worked in service or employment in BSNL DOT. The BSNL has no liability an regularized the Applicant labourer.
- 12. That the DOT, New Dothi vide No. 269-4/93-STN II (Pt) dated 12-02-1999 the authority of all DOT Officers for engagement of casual labourers as well as the power of all Accounts Officers to pay any such casual labourers is wirhdrawn. That the departmental development works are done through the centractor on contact basis. That so called dispute raised by the Applicant after 15/16 years and is time barred.
- 13. That the Management of BSML attended the conciliation meeting held by the Assistant Labour Commissioner (Central) and pointed out all such points and argument about all the points against the workman.

Under the circumstances the Management prayed to dismiss the claim of the alloged workman.

- I have carefully gone through the focuments submitted by both the parties. The Workman Gopal Sinha remained absent on the lists fixed for avidence and additional. no evidence and the evidence of the Management recorded. exparts. The reason behind is that the learned Advocate Mr. M.K. Jain relused to represent the workman. The civdence of the Management witness Sri Bijon Behari Nath is recorded exparte who has categorically stated that he dies not know the wickman. The Management witness is declined to cross examined by the Advocate Mr. M.K. Jain, Advocate for the workman who was present at the time of recording the evidence of the Management. Firends of justice, on careful senting of the documents in the record I find the workener has not called any document to grove that he was engaged by the Management as easing labourer. What I find there is not acceptable evidence for the workman to accept him as easied tabourer and is BSN1... The workman is not entitled for any relief. What I find the alleged workman Sri Gopal Sinha is not entitled for any relief. In the result, the claim of the alleged workman Gopa-Sinha is rejected.
- Propose the Award and send it to the authority concerned as per procedure confidentialsy and immediately.

H.A. HAZARIKA, Presiding Officer

नई दिल्ली, 19 जुलाई, 2007

का.शा. 2165.—औद्योगिक विवाद अधिनयम, १९४७ (1947 का :4) की असा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार विधाग के प्रबंधतंत्र के संबद्ध नियोक्कों और उनके कर्मकारों के विच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायासम, गुवाहादी के पेकट (संदर्ग संख्य 7/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-7-2007 को प्राप्त सुप्ता था !

[सं एल-400(2/94/2005-आईअर(डीयू)] सरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2165.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 7/2006) of the Central Government industrial Tributal-cum-Labour Court, Guwahati as shown in the Autoexure in the Industrial Dispute between the management of Telecom Department and their workman, which was received by the Central Government on 19-7-2007.

[No. 1.-40012/94/2005-TR (DU)]

SURENDRA SINGH, Desk Officer

ANNEXAME

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT.

GUWAHATI, ASSAM

PRESENT

Shri H. A. HAZARIKA, Presiding Officer CGIT-com-Labour Court, Governor Ref. Case No. 7 of 2006

In the matter of an Industrial Dispute between:—
The Management of BSNL, Silchar

Vis.

Their Workman Sri Monimoy Sinha

APPEARANCES

For the Workman : Mr. M. K. Jain, Advocate.

For the Management : Mr. D. Sur, Advocate

Dated of Award 5-7-07

AWARD

1. The Government of India, Ministry of Labour, New Delhi, vide its order No. L-40012/94/2005-IR(DU) referred this Industrial Dispute arose between the employers in relation to the Management of the BSNL, Silchar and their Workman, Sri Monimoy Sinha to adjudicate and to pass an sward on the strength of powers conferred by Clause (d) of sab-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) on the basis of the following Schedule.

SCHEDULE

- "Whether the demand of Shri Monimoy Sinha for reinstatement of his services with the management of BSNL. Silchar, SSA is legal and justified? If so, to what relief the workman is entitled and from which date "?"
- On being appeared by both the parties the proceeding is proceeded here for disposal being numbered. 7/2006 as per Procedure.
- 3. The case of the workman Sri Monimoy Stobe in brief that he was in Department of Telecommunication under BSNI, and worked against the Post of Master Roll and Daily Rated Mazdoor and he worked for the development of Net work of BSNL for the installation work and maintenance of the development work. But the BSNI, retrenched him without assigning any reason and no opportunity was given to him at the time of retrenchment. The retrenchment was illegal, arbitrary, unjustified and bad in law. He received no retrenchment Notice in writing and in lieu of Notices of justified amount was not paid to the workman.
- 4. That the workman produced the working days list before the authority but the authority paid no beed to it and the Department of Telecommunication introduced a Scheme for regularization of Casual Labourers who worked continuously for 240 days. But though he worked the prescribed period of 240 days continuously he was not regularized. The workman claimed that his petition is not time barred as he regularly kept contact with the authority for regularization.
- 5. That the BSNI, authority, Government of India. New Delhi vide letter No. 269/10/89/STN dated 7-11-89 whereby it is banned the engagement/employment of Casual labourer from 1988. But the petitioner/claimant was working as daily wage Mazdoor in the Telecommunication Department and the payment has been made on AGC -17.
- 6. That for many many years the petitioner claimant continuously keeping contact with the authority and submitted all documents but it remains without response. That the original work order given by the Sub-Inspector (Phone) Mr. Amer Ali submitted to Labour Commissioner.
- 7. That the Department of Telecommunication, New Delhi introduced a Scheme for regularization of Casual Labourers under the grant of temporary status and replanzation Scheme of DOT 1989 who worked 240 days in a year. But authority deprived him from his claim.
- That under Article 38 of the Constitution lie is entitled for security of service and promotion and welfare.
- 9. Under the present circumstances the authority ought to have been reinstate and regularize the workman as DOT BSNL employee. That the Casual Labourer or Daily Wagers and temporary employee can not be terminated without any reason assigning to them.

 That the workman claim that he is entitled to have benefit u/s 25-G, 25-H of the I.D. Act. 1947.

Under the circumstances the workman prayed to pass order to reinstate him and regularize him with back wages.

- The case of the Management BSNL, DOT in brief that the workman never workert in service or employment in BSNL, DOT. The BSNL has no liability to regularized the Applicant labourer.
- 12. That the DOT New Delhi wide No. 269-4/93-STN II (Pt) dated 12-02-1999 the authority of all DOT Officers for engagement of casual labourers as well as the power of all Accounts Officers to pay any such casual labourer is withdrawn. That the departmental development works are some through the contractor on contract basis. That so called dispute raised by the Applicant after 15/16 years and is time barred.
- 13. That the Management of BSNL attended the conciliation meeting held by the Assistant Labour Commissioner (Central) and pointed out all such points and argument about all the points against the workman.

Under the circumstances the management prayed to dismiss the claim of the alleged workman.

- On careful scrutiny of the evidence I find the workman Sri Monimoy Sinha claimed that he was engaged as Casual I abouter for 240 days in a year and as such, he is entitled for regularization and to acquire the status of Casual Labourer. In Support of his contention he submitted a document Eq. A wherein it is reflected that he worked for 470 days only in 3 years. That document as he said is received from one Narendra Ch. Malakar countersigned by one Sub-Divisional Officer, Phones, Silchar Sub-Division. Hut to prove this document he has not called any original decument such as, Attendance Register, Payment Register, e.c. This document is not authentic on the ground. that it has got no issue No. from the Office. This can not be said document issued on official duty. This must be proved with official record and as per procedure. Admittedly he has deposed in his cross-examination that he was assured to: Just 15 years for regularization but he is not regularized. by the BSNL. But there is no appointment letter or any cliner document that he has acquired the status of a casua! labourer to get benefit under the Scheme of Status of Casuai. Labourer which goes like this:
 - 75. Temporary Status
 - 5) Temporary Stuns would be conferred on all the casual labourers currently employed and who have rendered a continuous service of at least one year, out of which the must have been engaged on work for a period of 240 days (206 days in the casual foliates observing fiveday week). Such casual labourers will be designated as Temporary Mazdnor."

Further I find the matter is inordinately delayed and as per Amexure VI submitted by the Management as the matter is time barred. The Management witness Lachman Lal Bhar deposed that the workman is not the workman of BSNL. On scrutiny I find the workman Sri Monimoy Sinha entirely failed to show that he worked as casual labourer under the BSNL to get benefit under the Scheme. In the result, I find the aliged workman Sri Monimoy Sinha is not entitled to for any relief. In the result the claim of the workman Sri Monimoy Sinha is rejected.

15. Prepare the award and send in to the authority concerned as per procedure confidentially and immediately.

H. A. HAZARIKA, Presiding Officer

नई दिलली, 19 जुलाई, 2007

का,आ. 2166.—अंद्रोगिक विवाद अधिनियम, 1947 (1947) का 14) को धार 17 के अनुस्तरण में, केन्द्रीय सरकार दूर संधार विभाग के प्रबंधरंत्र के ध्वयद्ध नियोक्कों और उनके अमंकारों के बीच, अनुसंध में लिटिंग्ट औद्योगिक विवाद में केन्द्रीय सरकार औ्रांधीरिक अधिकरण/श्रम न्यावालय, गुवाहर्न्ट के बंचाट (संदर्भ संख्या 6/20/6) को प्रकाशित करती है, जो जेन्द्रीय मरकार को 19-7-2007 को प्राप्त हुआ था।

> [सं. एतः 40012/93/2005-आई आर(डीवृ)] सुरेद् सिंह, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2166.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government bereby publishes the award (Ref. No. 6/2006) of the Central Government Industrial Tribunal-cum-Labour Court. Grawahati as shown in the Amexure in the Industrial Dispute between the employers in relation to the imanagement of Telecom Department and their workman, which was received by the Central Government on 19-7-2007.

[No. L-40012/93/2005 TR (DUI)] SURENDIRA SINGH, Desk Officer ANNEXURE:

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT. GUWAHATI,ASSAM

PRESENT

Shri H.A. Hazarika, Presiding Officer CGIT-cum-Labour Court, Guwahad Ref. Case No. 6 of 2006

In the matter of an Industrial Dispute between:
The Management of BSNL, Silchar
Vrs.

Their Workman Sri Babui Ahmed Laskar APPEARANCES

For the Workman : Mr. M.K. Jain, Advocate, For the Management : Mr. D. Sin, Advocate

Date of Award 5-7-07

AWAED

1. The Government of India, Ministry of Labour, New Delhi, vide its Order No. L-40012/93/2005-IR(DU) referred this Industrial Dispute arese between the employers in relation to the Management of the BSNL, Silchar, and their Workman, Sri Babul Ahmed Laskar to adjudicate and to pass an award on the strength of powers conferred by Clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) on the basis of the following Schedule.

SCHOOLE

"Whether the demand of Shri Babul Ahmed Laskar for reinstatement of his services with the management of BSNL, Silchar, SSA is legal and justified? If so, to what relief the workman is entitled and from which date?"

- On being appeared by both the parties the proceedings is proceeded here for disposal being numbered 6/2006 as per procedure.
- 3. The case of the workman Sri Babul Ahmed Laskar, in brief that he was in Department of Telecommunication under BSNL and worked against the Post of Master Roll and Daily Rated Mazdur and he worked for the development of net work of BSNL for the installation work and maintenance of the development work. But the BSNL fetrenched him without assigning any reason and no opportunity was given to bim at the time of retrenchment. The retrenchment was illegal, arbitrary, unjustified and had in law. He received no retrenchment Notice in writing and in lieu of Notices of justified amount was not paid to the workman.
- 4. That the workman psoduced the working days list before the authority but the authority paid no laced to it and the Department of Telecommunication introduced a Scheme for regularization of Casual Labourers who worked continuously for 240 days. But though he worked the prescribed period of 240 days continuously he was not regularized. The workman claimed that his petition is not time barred as he regularly kept contact with the authority for regularization.
- 5. That the BSNL authority, Government of India, New Delhi vide Letter No. 269-10/89/STN dated 7-11-89 whereby it is banned the engagement/employment of Cassal labourer from 1988. But the petitioner/claimant was working as daily wage Mazdoov in the Telecommunication Department and the payment has been made on AGC-17.
- 6. That for manymany years the petitioner/claimant continuously keeping contact with the authority and submitted all documents but it remains without response. That the original work order given by the Sub-Inspector (phone) Mt. Namur All submitted to Labour Commissioner.
- That the Department of Telecommunication, New Delhi introduced a Scheme for regularization of Casual

Labourers under the grant of temporary status and regularization Scheme of DOT 1989 who worked 240 days in a year. But authority deprived him from his claim.

- That under Articles 38 of the Constitution he is entitled for security of service and promotion and welfare.
- 9. Under the present circumstances the authority ought to have been reinstate and regularize the workman as DOT/BSNL employee. That the Casual Labourer or Daily Wagers and temporary employee can not be terminated without any reason assigning to them.
- That the workman claim that he is entitled to have benefit n/s 25-G, 25-H of the I.D.Act, 1947.

Under the circumstances the workman prayed to pass order to reinstate him and regularize him with back wages.

- 11. The case of the Management BSNL, DOT in brief that the workman never worked in service or employment in BSNL, DOT. The BSNL has no liability to regularized the Applicant labourer.
- 12. That the DOT, New Delhi vide No. 269-4/93-STN II (PL) dated 12-02-1999 the authority of all DOT Officers for engagement of casual labourers as well as the power of all Accounts Officers to pay any such casual labourer is withdrawn. That the departmental development works are done through the contractor on contract basis. That so called dispute raised by the Applicant after 15/16 years and is time barred.
- 13. That the Management of BSNL attended the conciliation meeting held by the Assistant Labour Commissioner (Central) and pointed out all such points and argument about all the points against the workman.

Under the circumstances the management prayed to dismiss the claim of the alleged workman.

14. Perused the evidence-in-Affidavit filed by the workman Sri Babol Ahmed Lashkar. He claimed that he was engaged as casual labourer for 240 days in a year and as per Scheme he is entitled to be regularized. That he is retrenched without any reason and paid no wages in lieu. of notice. That his case is not time barred as he approached the management from time to time for relief and the management assured him to regularize or to provide relief but I have not found that the workman worked continuously for 240 days in a year to got relief under the scheme. No original documents were called, no attendance Register is called to prove his claim. A certificate is given by the workman in which it is reflected that he worked in 1992— 128 days, in 1993-238 days. This document is also not proved as per procedure. No Office issue No. is given and as it is a document related to financial matter it must be proved by calling the related financial documents. Further I find there is no evidence of creation of Post of Casual Labourer. There is no evidence of engagement or appointment letter. No attendance Register is called to

prove his claim. Further he is not within the Scheme as under:

"5 Temporary Status."

(i) Temporary Status would be conferred on all the casual labourers currently employed and who have rendered a continuous service of at least one year, out of which they must have been engaged on work for a period of 240 days (206 days in the case of offices observing five-day week). Such casual labourers will be designated as Temporary Mazdoor."

I this found that the case is time barred as per Ahneaure-VI of the Management.

- 15. It is pertinent to note here that Sri Lachmal I.al Bhar who is Sub-Divisional Engineer, Vigilance, BSNL. Silchar categorically stated that he does not know the workman. He was cross-examined as regards some documents but what I find the workman could not prove that he is within the ambit of the Scheme and that he worked 240 days continuously in a year.
- 16. Under the above facts and circumstances what I find the alleged workman Sri Babul Ahmed Laskar is not entitled for any relief and his claim is rejected.
- Prepare the award and send it to the concerned authority as per procedure confidentially and immediately.

H. A. HAZARIKA, Presiding Officer

नई दिल्लो, 19 जुलाई, 2007

का.आ. \$167.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, क्षेन्द्रीय सरकार दूर संचार विभाग के प्रबंधांत्र के संबद्ध नियोजकों और उनके कर्मकारों के बरेच, अनुबंध में हिदिंग्द औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण अन न्यागालय, गुवाहाटी के पंचाट (संदर्भ संख्या 5/2006) को प्रकाशित करारी है, जो केन्द्रीय सरकार को 19-7-2007 को प्राप्त हुआ था:

> ं [सं एल-40012/86/2005-आईआर(डी.यू.)] धुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2167.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government Industrial Tribunal-cam-Labour Court, Cawahati as shown in the Amexure in the Industrial Dispute between the employers in relation to the management of Telecom Department and their workman, which was received by the Central Government on 19-7-2007.

(No L-40012/86/2005-IR (DU)) SURENDRA SINGH, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GUWAHATI, ASSAM

PRESENT:

Shri H.A. HAZARIKA, Presiding Officer CGIT-curs-Labour Court, Guwahati Ref. Case No. 5 of 2006

In the matter of an Industrial Dispute between .—
The Management of BSNL, Silchar

 V_{FS} .

Their Workman Sri Ashok Kurnar Paul.

APPEARANCES

For the Workman : Mr. M.K. Jain, Advocate.

For the Management : Mr. D. Sur. Advocate

Dated of Award 5-7-07

AWARD

1. The Government of ladia, Ministry of labour. New Delhi, vide its order No. L. 4001 2/66/2005-IR(DU) referred this Industrial Dispute arose between the employers in relation to the Management of the BSNL, Silchar, and their Werkman, Sri Ashok Kemar Paul to adjudicate and to poss an award on the strength of powers conferred by Clause (d) of Sub-section (i) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) on the basis of the following Schedule.

SCHEDULE

"Whether the demand of Shri Ashok Kumar Paul for reinstatement of his services with the management of BSNL, Silchar, SSA is legal and justified? If so, an what relief the workman is entitled and from which date. ?"

- On being appeared by both the parties the proceedings is proceeded here for disposal being Numbered 05/2006 as per Procedure.
- 3. The case of the workman Sri Ashok Kumar Paul in brief that he was in department of Telecommunication under BSNI, and worked against the Post of Master Roll and Daily Rated Mazdur and he worked for the development of Net work of BSNI, for the installation work and maintenance of the development work. But the BSNI researched him without assigning any reason and no opportunity was given to him at the time of retreachment. The retrenchment was allegal, arbitrary, unjustified and had in law, He received no retrenchment Notice in writing and in lieu of Notice the justified amount was not paid to the workman.
- That the workman produced the working days has before the authority but the authority paid no head to it.

and the Department of Telecommunication introduced a Scheme for regularization of Cannal Labourers who worked continuously for 240 days. But though he worked the prescribed period of 240 days continuously he was not regularized. The workman claimed that his petition is not time barred as he regularly kept contact with the authority for regularization.

- 5. That the HSNL authority, Government of India, New Delhi vide letter No.269-10/89/STN dated 7-11-89 whereby it is banned the engagement/employment of Casual Labourer from 1988. But the Petitioner/Claimant was working as daily wage Mazdoor in the Telecomatumication Department and the payment has been made on AGC -17.
- 6. That for many many years the petitioner/claimant continuously keeping contact with the authority and submitted all documents but it remains without response. That the original work order given by the Sub-haspector (Phone) Mr. Namar Ali submitted to Labour Commissioner.
- 7. That the Department of Telecommunication, New Dethi introduced a Scheme for regularization of Casual Labourers under the grant of temporary Status and regularization Scheme of DOT 1989 who worked 240 days in a year. But authority deprived him from his claim.
- That under Article 38 of the Constitution be is entitled for security of service and promotion and welfare.
- 9. Under the present circumstances the authority ought to have been reinstate and regularize the workman as DOT/BSNL employee. Tast the Casual Labourer or Duily Wagers and temporary employee can not be terminated without any reason assigning to them.
- That the workman claim that he is entitled to have benefit u/s 25-G, 25-H of the I.D.Act, 1947.

Under the circumstances the workman prayed to pass order to reinstate him and regularize him with back wages.

- The case of the Management BSNL, DOT in brief that the workman never worked in service or Imployment in BSNL, DOT. The BSNL has no liability to regularized the Applicant labourer.
- 12. That the DOT, New Delhi vide No. 269-4/93-STN II (Pt) dated 12-2-1999 the authority of all DOT Officers for engagement of casual labourers as well as the power of all Accounts Officers to pay any such casual labourer is withdrawn. That the deputmental development works are done through the contractor on contract basis. That so called dispute raised by the Applicant after 15/16 years and is time barred.
- That the Management of BSNL attended the conciliation meeting held by the Assistant Labour

Commissioner (Central) and pointed out all such points and argument about all the points against the workman.

Under the circumstances the Management prayed to dismiss the claim of the alleged workman.

Perused the evidence-in-Affidavit filed by the workman Sri Ashok Kumar Paul. He claimed that he was engaged as casual labourer for 240 days in a year and as . per Scheme he is entitled to be regularized. That he is retrenched without any reason and paid no wages in lieuof notice. That his case is not time barred as he approached. the management from time to time for relief and the management assured him to regularize or to provide relief but I have not found that the workman worked continuously for 240 days in a year to get relief under the Scheme. No original dosements were called, no aneadance Register is: called to prove his claim. A Certificate is given by the workman in which it is reflected that he worked in 1989-207. days; in 1990-206 days in 1991-230 days. This document is also not proved as per procedure. No Office issue No. is gives and as it is a document related to financial matter it. must be proved by calling the related fluancial documents. Purther I find there is an evidence of creation of Post of Casnal Labourer. There is no evidence of engagement or appointment letter. No attendance Register is called to prove his claim. Further he is not within the Scheme as mules:

"5. Tearporary Status

(i) Temporary Status would be conferred on all the casual labourers currently employed and who have rendered a continuous service of at least one year, out of which they must have been engaged on work for a period of 240 days (206 days in the case of offices observing fiveday week). Such casual labourers will be designated as Temporary Mazdoor."

I also found that the case is time barred as per Amexure-VI of the Management.

- 15. It is pertinent to note here that Sri Lachmal Lal Bhar who is Sub-Divisional Engineer, Vigilance, BSNL, Silchar categorically stated that he does not know the workman. He was cross-examined as regards some documents but what I find the workman could not prove that he is within the ambit of the Scheme and that he worked 240 days continuously in a year.
- 16. Under the above facts and circumstances what I find the alleged workman Sri Ashok Kumar Paul is not entitled for any relief and his claim is rejected.
- Prepare the award and send it to the concerned, authority as per procedure confidentially and immediately.

H. A. HAZARIKA, Presiding Officer

न्हें बिल्सी, 19 जुलाई, 2007

बर आ. 2168.— और मेंगल विवाद अधिनियम, 1947 (1947 का 14) की बार 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार विचाग के प्रवीशोत के संबद्ध नियोधकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट और्योगिक विवाद में केन्द्रीय सरकार और्योगिक अधिकरण/अस न्यायालय, गुक्काटी के पंचाद (संदर्भ संख्या 4/2006) को प्रकाशित कार्यों है, जो केन्द्रीय सरकार को 19-7-2007 को प्राप्त हुआ था।

> [सं. प्ल-40012/85/2005 कर्बकार(सीयू] सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2168.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 4/2006) of the Central Government industrial Tribunal-cum-Labour Court, Guwaluri as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Telecom Department and their workman, which was received by the Central Government on 19-7-2007.

[No. L-40012/85/2005-IR (DU)] SURENDRA SINGH, Desk Officer ANNEXEMBE

IN THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT,
GUWAHATI, ASSAM
PRESENT:

Shri H.A. HAZARIKA, Presiding Officer
CGT-cum-Labour Court, Gawalanti
Ref. Case No. 4 of 2006

In the mainer of an Industrial Dispute between :-The Management of BSNL, Silcher

 V_{rs} .

Their Workman Sri Rakesh Sinha

APPEARANCES

For the Workman

: Mr. M. K. Jain, Advocage.

For the Management

: Mr. D. Sur, Advocate

Date of Award 4-7-2007

AWARD

1. The Government of India, Ministry of labour, New Delhi, vide its Order No. L-40012/85/2005-IR(DLI) referred this Industrial Dispute arose between the employers in relation to the Management of the BSNL, Silchar, and their Workman, Sri Rakesh Sinha to adjudicate and to pass an award on the strength of powers conferred by Clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) on the basis of the following Schedule.

SCHOOL R

- "Whether the demand of Shri Rakesh Sinha for reinstatement of his services with the management of BSNL, Silchar, SSA is legal and justified? If so, to what relief the workman is emitted and which from date?"
- On being appeared by both the parties the proceedings is proceeded here for disposal being numbered 4/2006 as per procedure.
- 3. The case of the workman Sri Rakesh Sinin in brief that he was in Department of Telecommunication under BSNL and worked against the Post of Master Roll and Daily Rated Mazdour and he worked for the development of net work of BSNL for the installation work and maintenance of the development work. But the BSNL retrenched him without assigning any reason and no opportunity was given to him at the time of retrenchment. The retrenchment was illegal, arbitrary, unjustified and bad in law. He received no retrenchment Notice in writing and in lieu of Notice the justified amount was not paid to the workman.
- 4. That the workman produced the working days list before the authority but the authority paid no heed to it and the Department of Telecommunication introduced a Scheroe for regularization of Casual Labourers who worked continuously for 240 days. But though he worked the prescribed period of 240 days continuously he was not regularized. The workman claimed that his petition is not time buried as he regularly kept contact with the authority for regularization.
- 5. That the BSNL anthority, Government of India, New Deihi vide Letter No. 269/10/89 STN deted 7-11-89 whereby it is hanned the engagement/employment of Casnal Labourer from 1988. But the petitioner/claimant was weaking as daily wage Mazdoor in the Telecommunication Department and the payment has been made on AGC -17.
- 6. That for many many years the petitioner/claimant continuously keeping contact with the authority and submitted all documents but it remains without response. That the original work order given by the Sub-Inspector (Phone) Mr. Namar Ali submitted to Labour Commissioner.
- 7. That the Department of Telecommunication, New Delhi introduced a Scheme for regularization of Casual Labourers under the grant of temporary Status and rigularization Scheme of DOT 1989 who worked 240 days in a year. But authority deprived him from his claim.
- That under Article 38 of the Constitution he is entitled for security of service and promotion and welfare.
- 9. Under the present circumstances the authority ought to have been reinstate and regularize the workman as DOT/ BSNI, employee. That the Casual Labourer or Daily Wagers and temporary employee can not be terminated without any reason assigning to them.

 That the workman claim that he is easitled to have benefit wis 25-G, 25-H of the I.D.Act. 1947.

Under the circumstances the workman prayed to pass order to reinstate him and regularize him with back wages.

- 11. The case of the Management BSVII., DOT in brief that the workman never worked in service $\tau \pi$ employment in BSNL, DOT. The BSNL has no liability to regularized the Applicant labourer.
- 12. That the DOT. New Delhiwide No. 269-493-STN II (Pt) dated 12-02-1999 the authority of all DOT Officers for engagement of casual labourers as well as the power of all Accounts Officers to pay any such casual labourer is withdrawn. That the departmental development works are done through the contractor on contract basis. That so called dispute raised by the Applicant after 15/16 years and is time barred.
- 13. That the Management of BSNL attended the conciliation meeting held by the Assistant Labour Commissioner (Central) and pointed out all such points and argument about all the points against the workman.

Under the circumstances the Management prayed to dismiss the claim of the alleged workman.

Perused the evidence-in-affidavit filed by the workman Sri Rakesh Sinha. He claimed that he was engaged as Casual Labourer for 240 days in a year and as per Scheme he is entitled to be regularized. That he is retrenched without any reason and paid no wages in lieu of notice. That his case is not time barred as he approached the management from time to time for relief and the management assured him to regularize or to provide relief but I have not found that the Workman worked continuously for 240 days in a year to get relief under the Scheme. No original documents were called, no attendance Register is called to prove his claim. A Certificate is given by the workman in which it is reflected that he worked in 1989-165 days; in 1990-169 days and in 1991-152 days. This document is also not prove as per procedure. No Office issue No. is given and as it is a document related to financial matter it must be proved by calling the related financial documents. Further I find there is no evidence of creation of Post of Casnal Labourer. There is no evidence of engagement or appointment letter. No attendance Register is called to prove his claim. Further he is not within the Scheme as under :

"5. Temporary Status

① Temporary Status would be conferred on all the casual labourers currently employed and who have rendered a continuous service of at least one year, out of which they must have been engaged on work for a period of 240 days (206 days in the case of offices observing fiveday week). Such casual labourers will be designated as Temporary Mazdoor."

I also found that the case is time harred as per Annexure-VI of the Management.

- 15. It is pertinent to note here that Sri Lachman Lal Bhar who is Sub-Divisional Engineer, Vigilance, BSNL, Silchar categorically stated that he does not know the workman. He was cross-examined as regards some-documents but what I find the workman could not prove that he is within the ambit of the Scheme and that he worked 240 days continuously in a year.
- 16. Under the above facts and circumstances what I find the alleged workman Sri Sinha is not entitled for any relief and his claim is rejected.
- Prepare the award and send it to the concerned authority as per procedure confidentially and immediately.

H. A. HAZARIKA, Presiding Officer

नई दिल्ली, 19 जुलाई, 2007

कर अ. 2169.— और से कियाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार दियाग के प्रबुधतंत्र के संबद्ध नियोक्कों और उनके कर्मकारों के बीच, अनुबंध में निर्देश्य और्योगिक विवाद में केन्द्रीय सरकार और अधिकरण/अप न्यायतम, गुवहारी के पंचार (संदर्भ संख्या 3/2006) को प्रकारित करती है, यो केन्द्रीय सरकार को 19-7-2007 को प्राप्त हुआ था।

[सं. प्रस-40012/84/2005-आईआर(स्तेवू)] सुरेन्द्र सिंह, देशक अधिकारी

New Dethi, the 19th July, 2007

S.O. 2169.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 3/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Grawshati as shown in the American in the Industrial Dispute between the employers in relation to the management of Telecom Department and their workman, which was received by the Central Government on 19-7-2007.

(No. L-40012/84/2005-IR (DU)) SURENDRA SINGH, Desk Officer ANNEXURE

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IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GUWAHATI, ASSAM

PRESENT

Shri H. A.HAZARBKA, Presiding Officer

CGIT-cam-Labour Court, Gawahad

Ref. Case No. 3 of 2006

In the matter of an Industrial Dispute between :--- : ...

The Management of BSNL, Silchar

 $V_{\ell Z_{i}}$

Their Workman Sri Santa Sinha

APPEARANCES:

For the Workman

:Mr. M. K. Jain, Advocate.

For the Management

. Mr. D. Sur, Advocate

Date of Award 4-7-07

AWARD

1. The Government of India, Ministry of Labour, New Delhi, vide its order No. L=40012/84/2005-IR(DU) referred this Industrial Dispute prose between the employers in relation to the Management of the BSNL, Silchar, and their Workman, Sri Santa Sinha to adjudicate and to pass an award on the strength of powers conferred by Clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) on the basis of the following Schedule.

SCHEDULE

- "Whether the demand of Shri Santa Sinha for reinstatement of his services with the management of BSNL, Silchar, SSA is legal justified? If so, to what relief the weakman is entitled and from which date?"
- On being appeared by both the parties the proceedings is proceeded here for disposal being Numbered 3/2006 as per Procedure.
- 3. The case of the workman Sri Santa Sinha in brief that he was in Department of Telecommunication under BSNL and worked egainst the Post of Muster Roll and Daily Rated Muzdur and he worked for the development of network of BSNL for the installation work and maintenance of the development work. But the BSNL retrenched him without assigning any reason and no opportunity was given to him at the time of retrenchment. The retrenchment was illegal, arbitrary, unjustified and bad in law, He received no retrenchment Northe in writing and in lieu of Notice of justified amount was not paid to the workman.
- 4. That the workman produced the working days list before the authority but the authority paid no head to it and the Department of Telecommunication introduced a Scheme for regularization of Casual Labours who worked continuously for 240 days. But though he worked the prescribed period of 240 days continuously he was not regularized, the workman claimed that his petition is not time barred as he regularly kept contact with the authority for regularization.
- 5. That the BSNL authority, Government of India, New Delhi vide 1 etter No. 269-10/89/STN dated 7-11-89 whereby it is banned the engagement/employment of Casual labourer from 1988. But the peritioner/claimant was working at daily wage Mazdour in the Telecommunication Department and the payment has been made on AGC -17.
- 6. That for many many years the petitioner/claimant continuously keeping contact with the authority and submitted all documents but it remains without response. That the driginal work order given by the Sub-Inspector (phone) Mr. Namar Ali submitted to Labour Commissioner.

- 7. That the Department of Telecommunication. New Delhi introduced a Scheme for regularization of Casual Labourers under the grant of temporary Status and regularization Scheme of DOT 1989, who worked 240 days in a year. But authority deprived him from his claim.
- That under Acticle 38 of the Constitution he is entitled for security of service and promotion and welfare.
- 9. Under the present circumstances the authority ought to have been reinstate and regularize the workman as DOT/ RSNL employee. That the Casual Labourer or Daily Wagers and temporary employee can not be terminated without any reason assigning to them.
- That the workman claim that he is entitled to have benefit u/s 25-G. 25 H of the 1.D. Act 1947.

Under the circumstances the workman prayed to pass order to reinstate him and regularize him with back wages.

- 11. The case of the Management BSNL, DOT in brief that the workman never worked in service or employment in BSNL. DOT. The BSNL has no liability to regularized the Applicant labourer.
- 12. That the DOT, New Delhi vide No. 269-4/93-STN II (Pt) dated 12-02-1999 the surhurity of all DOT Officers for engagement of casual labourers as well as the power of all Accounts Officers to pay any such casual labourer is withdrawn. That the departmental development works are done through the contraction on contract basis. That so called dispute raised by the Applicant after 15/16 years and is time barred.
- 13. That the Management of BSNL attended the conciliation meeting held by the Assistant Labour Commissioner (Central) and pointed our all such points and argument about all the points against the workman.

Under the circumstances the Management prayed to dismiss the claim of the alleged workman.

 Perusaed the evidence desposed by Sri Lactimen. Lal Bhar, Divisional Engineer Vigilance, HSNL, who is cross. examined by the learned Advocate Mr. M. K. Jain for the workman Sri Sarua Sinha. In his evidence-in-Affidavit the workman stated that he was working under BSNI... Department of Telecommunication, Silchar, on the basis of MR & DRM and worked for total period of 459 days. He also stated that the was retrenched by the Management without giving any notice and without paying wages in lieu of Notice. As per Scheme introduced by the DOT, New Delhi he ought to have been regularized but he is not regularized though he was assured by the Management to regularize him. As per claim, as he worked 240 days as engaged casual labourer he ought to have been regularized. In cross examination part he has deposed that no appointment letter was issued to him. A certificate was issued that he worked under BSNI, for 459 days. He filed the case after a long time for want of money.

15 I have gone through the certificate issued by Namar Ali, S. I. Phone countersigned by on Sub-Divisional Engineer, Phone. In this certificate no issue No. as per, procedure is given. No original is called. This is related to financial matter, there must be financial record to prove this document. Hence, in my opinion this document is not notherate and acceptable as evidence. Further I find the workman Sri Santa Sinba could not prove that he falls in any Scheme for regularization. In Annexure-III there is a definition as regards Temporary Status which is as follows:

*5. Temporary Status

(i) Temporary Status would be conferred on all the casual labourers currently employed and who have rendered a continuous service of at least one year, out of which they must have been engaged on work for a period of 240 days (206 days in the case of offices observing fiveday week). Such casual labourers will be designated as Temporary Mazdoor."

The workman Sri Santa Sinha could not prove that he was engaged by the Management and worked continuously for 240 days in a year. Further I also find as per Annexure-VI his claim is time barred.

- 16. Under the above facts and circumstances what I tind that the workman could not establish that he was engaged by the Management and acquired temporary status to be regularized.
- In the result, I find the Workman Sri Santa Sinha is not entitled for any relief and his claim is rejected.
- Prepare the award and send it to the concerning authority confidentially and immediately.

N. A. HAZARIKA, Presiding Officer বৰ্হ বিজ্ঞা, 19 অনুষ্ঠ, 2007

का.आ. 2170.—औद्योगिक विकार अधिनियम, 1947 (1947 क. 14) को भारा 17 के अनुसरण में, केन्द्रोय सरकार दूर संचार विकाश को प्रबंधकंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विकाद में केन्द्रीय सरकार औद्योगिक अधिकरण/अम न्वायालय, गुक्काटी के पंचाट (संदर्भ संख्या 2/2006) को प्रकाशिश करती है, जो केन्द्रीय सरकार को 19 7-2007 को प्राप्त हुआ था।

> [सं. एल-400:2783/2005-आईआर(**डीयू)]** सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2170.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 2/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Gowahati as shown in the Annexure in the Industrial Dispute between the employers in relation to the

management of Telecom Department and their workman, which way received by the Central Government on 19-7-2007.

[No.L-40012/83/2005-IR (DU)] SURENDRA SENGH, Desk Officer ANNOTIRE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GUWAHATI, ASSAM

PRESENT:

Shri H. A. HAZARIKA, Presiding Officer CGIT-cum-Labour Court, Gewahati Ref. Case No. 92 of 2066

In the matter of an Industrial Dispute between:

The Management of BSNL, Silchar

Vrs.

Their Workman Sri Fayaj Uddin Laskar.

APPEARANCES

For the Workman

Mr. M. K. Juin, Advocate.

For the Management

: Mr. D. Sur, Advocate

Dated of Award 4-7-07

AWARD

1. The Government of India, Ministry of Labour, New Delhi, vide its order No. L-40012/R3/2005 IR(DU) referred this Industrial Dispute arose between the employers in relation to the Management of the BSNL, Silchar, and their Workman, Sri Payaj Uddin Laskar to adjudicate and to pass an award on the strength of powers conferred by Clause (d) of sub-section (1) sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) on the basis of the following Schedule.

SCHEDULE

"Whether the demand of Shri Payaj Uddin Laskar for reinstatement of his services with the management of BSNL, Süchar, SSA is legal and justified? If so, to what relief the workman is entitled and from which date ?"

- On being appeared by both the parties the proceedings is proceeded here for disposal being. Numbered 2/2006 as per procedure.
- 3. The case of the workman Sri Fayaj Uddin Laskar in brief that he was in Department of Telecommunication under BSMI, and worked against the Post of Master Roll and Daily Rated Mazdoor and he worked for the development of net work of BSNL for the installation work and maintenance of the development work. But the BSNL retrenched him without assigning any reason and no opportunity was given to him at the time of retrenchment. The retrenchment was illegal, arbitrary, unjustified and bad in law. He received no retrenchment Notice in writing and in lieu of Notice the justified amount was not paid to the workman.

- 4. That the workman produced the working days list before the authority but the authority paid no head to it and the Department of Telecommunication introduced a Scheme for regularization of Casual Labourers who worked certinuously for 240 days. But though he worked the prescribed period of 240 days continuously he was not regularized; the workman claimed that his petition is not time burred as he regularly kept contact with the authority for regularization.
- 5. That the BSNL authority, Government of India, New Delhi vide 1 etter No. 269-10/89/STN dated 7-11-89 whereby it is banned the engagement/employment of Casual labeter from 1988. But the petitioner/claimant was working as failly wage Mazdoor in the Telecommunication Department and the payment has been made on AGC -17.
- 6. That for many many years the petitioner/claimant continuously keeping contact with the authority and submitted ail documents but it remains without response. That the original work order given by the Sub-inspector (Phone) Mr. Namar Ali submitted to Labour Commissioner.
- 7. That the Department of Telecommunication, New Delhi introduced a Scheme for regularization of Casual Labourers under the grant of temporary Status and regularization Scheme of DOT 1989 who worked 240 days in a year. But authority deprived him from his claim.
- That under Article 38 of the Constitution he is entitled for; security of service and promotion and welfare.
- 9. Under the present circumstances the authority ought to have been reinstate and regularize the workman as DOT/ HSNL employee. That the Casual Labourer or Daily Wagers and temporary employee can not be terminated without any reason assigning to them.
- That the wrkman claims that he is entitled to have benefit u/s 25-G, 25-H of the LD.Act, 1947.

Under the circumstances the workman prayed to pass order to rejustate him and regularize him with back wages.

- 11. The case of the Management BSNL, DOT in brief that the workman never worked in service or employment in BSNL, DOT. The BSNL has no liability to regularize the Applicant (abouter.
- 12. That the DOT. New Delhi vide No. 269-493-STN II (Pt) dated 12-02-1999 the authority of all DOT Officers for engagement of casual labourers as well as the power of all Accounts Officers to pay any such casual labourer is withdrawn. That the departmensal development works are done through the contractor on contract basis. That so called dispute raised by the Applicant after 15/16 years and is simel barred.
- 13. That the Management of BSNL attended the conciliation meeting held by the Assistant Labour Commissipher (Central) and pointed out all such points and argument about all the points against the workman.

Under the circumstances the Management prayed to dismiss the claim of the alleged workman.

14. Perused the evidence in Affidavit filed by the workman. The workman is not cross examined by the Management Advocate. The Advocate for the Workman submitted that he is not willing to proceed with the case as the workman is not willing to kee contact to him.

Perusal the evidence desposed by Sri Bijan Behari. Nath, Sr. S.D.E., Legal, BSNL, Sikhar. He has deposed that the alleged workman is not employee of the Management. He was never appointed by the Management, No. appointment letter was issued to him. He is not crossexamined by the learned Adovoste Mr. M.K. Jain. The reason behind it is that the workman remain absent. However I have perused all the relevant documents and evidence-in-Affidavit of the workman. I find the workman. Fayaz Uddin Ahmed though clumined that he worked 530. days yet I found he has not worked 240 days continuous work in a year. Further there is no evidence of creation of posts of Grade-D or casual labour to give him status and regularization of casual labourer. He has submitted a list of working days but that has not ben proved as per procedure. No documents is called from the end of the Managertiers. even the Attendance Register. The matter as per Annexure-VI of the Management is fatal due to inordinate delay. All. in all I find the workman side is failed to establish that he was a casual labourer at any time under the Management. It is very much important to note here that to acquire temporary status the following condition is to be proved: by the workman and in the instant case the workman entirely. failed to proved it.

"5. Temporary Status

- (i) Temporary Status would be conferred on all the casus; labourers currently employed and who have rendered a continuous service of at least one year, out of which they must have been engaged on work for a period of 240 days (206 days in the case of offices observing five-day week). Such casual labourers will be designated as Temporary Mazdoor."
- 16. In the result, what I find the Workman is not entitled for any relief he claimed and his claim is rejected. Accordingly prepare the award and send it confidentially to the authority enoocened immediately.

H. A. HAZARIKA. Presiding Officer

नई दिल्ली, 19 जुलाई, 2007

का,आ. २१७१, --- स्टैडोमिक विवाद अधिनियम, 1947 (1947) का ६4) को घारा 17 के अनुसरण में, कंन्द्रीय सरकार दूर संचार विधार के प्रबंधतंत्र के मंबद्ध नियोजकों और अन्के कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, गुवाहारों के पंधाट (संदर्भ संख्या 1/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-7-2007 को प्राप्त. हुआ या ।

> [सं. एल-40012/82/2005-केईआर(डीवृ)] सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2171.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 1/2006) of the Central Government industrial Tribunal cum-Labour Court, Guwahati as shown in the Admentic in the Industrial Dispute between the employers in relation to the management of Telecom Department and their workman, which was received by the Central Government on 19-7-2007.

[No.1.-40012/R222XIS-IR (DU)]
SURFNDRA SINGH, Desk Officer
ANNEXUME

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CUWAHATI, ASSAM

PRESENT:

Shri H. A. HAZARIKA, Presiding Officer
CGIT-cum-Labour Court, Gurwhafi
Ref. Case No. 61 of 2006

In the matter of an Industrial Dispute between :—
The Management of BSNL, Sächar

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Their Workman Sri Anil Sinha APPEARANCES

For the Workman

:Mr. M. K. Jain, Advocate

For the Management

: Mr. D. Sur, Advocate

Dated of Award 4-7-07

AWARD

1. The Government of India, Ministry of labour, New Delhi, vide its order No. L-40012/82/2005-IR(DU) referred this Industrial Dispute arose between the employers in relation to the Management of the BSNL, Silchar, and their Workman, Sri Anil Sinha to adjudicate and to pass an award on the strength of powers conferred by Clause (d) of subsection (1) and sub-section (2A) of Section 10 of the Industrial Dispute Act, 1947 (14 of 1947) on the basis of the following Schedule.

SHEDDLE

"Whether the demand of Shri Anit Sinhs for reinstatement of his services with the management of BSNL, Silchar, SSA is legal justified? If so, to what relief the workman is entitled and from which date."

- On being appeared by both the parties the proceedings is proceeded here for disposal being. Numbered 1/2006 as per Procedure.
- 3. The case of the workman Sri Amil Sinhs in brief that he was in Department of Teleconsummication under BSNL and worked against the Poet of Master Roll and Daily Rated Mazdur and he worked for the development of net work of BSNL for the installation work and maintenance of the development work. But the BSNL retrenched him without assigning any reason and no opportunity was given to him at the time of retrenchment. The retrenchment was illegal, arbitrary, unjustified and bad in law. He received no retrenchment Notice in writing and in lieu of Notice the justified amount was not paid to the workman.
- 4. That the workman produced the working days list before the authority but the authority paid no beed to it and the Department of Telecommunication introduced a Scheme for regularization of Casual Labourers who worked continuously for 240 days. But though he worked the prescribed period of 240 days continuously he was not regularized. The workman claimed that his petition is not time barred as he regularly kept contact with the authority for regularization.
- 5. That the BSNL authority, Government of India, New Delhi vide letter No. 269-10/89/STN deted 7-11-89 whereby it is banned the engagement/employment of Casual laboure from 1988. But the petitioner/claimant was working as daily wage Mazdoor in the Telecommunication Department and the payment has been made on AGC -17.
- 6. That for many many years the petitioner/claimant continuously keeping contact with the authority and submitted all documents but it remains without response. That the original work order given by the Sub-Inspector (phone) Mr. Namer Ali submitted to Labour Commissioner.
- 7. That the Department of Telecommunication, New Dethi Introduced a Scheme for regularization of Casual Labourers under the grant of temporary Status and regularization Scheme of DOT 1969 who worked 240 days in a year. But authority deprived him from his claim.
- That under Article 38 of the Constitution he is entitled for security of service and promotion and welfare.
- 9. Under the present circumstances the authority ought to have been reinstate and regularize the workman as DOT/ BSNL employee. That the Casual Laboures or Daily Wagers and temporary employee can not be terminated without any reason assigning to them.
- 10. That the workman claim that he is catified to have benefit U/s 25-G, 25-H of the I.D. Act, 1947.

Duder the circumstances the workman prayed to pass order to reinstate him and regularize him with back wages.

 The case of the Management BSNL, DOT in brief that the workman never worked in service or employment in BSNL, DOT. The BSNL has no liability to regularized the Applicant labourer.

- 12. That the DOT, New Delhi vide No. 269-4/93-STN II (Pt) dated 12-2-1999 the authority of all DOT Officers for engagement officers to pay any such casual labourer is withdrawn. That the departmental development works are done through the contractor on contract basis. That so called dispute traised by the Applicant after 15/16 years and is time barred.
- 13. That the Management of BSNL attended the conciliation theeting held by the Assistant Labour Commissioner (Central) and pointed out all such points and argument about all the points against the workman.

Under tije circumstances the Management prayed to dismiss the claim of the alleged workman.

- Perusal the evidence-in-Affidavit filed by the workman. Also perused the cross examination made by Mr. D. Sur, Advocate for the Management, Also perused the evidence deposed by Sri Lachman Lai Bhar for the Management, who is cross-examined by the learned Advocate Mr.: M.K. Jain for the workman. The brief comention of the evidence submitted by the workman Anil. Sinha that he was a BSNT, employee worked for total period. 483 days. That he is illegally retrembed by the Management without notice and without paid in lieu of Natice. That he ought to have been regularized as he has worked for 240 days in a lyear. The he has submitted in Ext. A a erztificate issued by Jamar Ali, Sub-Inspector, Phone under whom he worked for 483 days. In cross-examination part he has admitted that no appointment letter was issued to him. That prescritly he is not working under BSNL. In crossexamination part he has also admitted that the matter became time barred due to present by the Management as management assured him to regularize time to time Ext. A is the list of working days, he worked.
- 15. The witness for the Management deposed that workman is not known to him and no appointment letter is used to issue to the Causal employee.
- 16. Head the argument submitted by Mr. D. Sur, Advocate for the Management and Mr. M. K. Jain. Advocate for the workman. Perused the documents relied by both the parties. I find a list of working days is submitted by the workman but to prove the same he has not called any record from the end of the Management. This document can not be accepted anthentic document. However, I have found though the worked 483 days yet he has not worked 240 days in a year. As per the Scheme to be regularized he must be a Casual employee and he must work 240 days in a year. No Attendance Register is called and proved. There is no evidence of treation of posts for Grade-D employee or Casual labourer. It is not proved that the workman worked under BSNL. The Management has submitted Annexure-VI wherein as regards the time limitation is

described. I find as per this Anexure the claim of the workman due to inordinate delay became not entertainable. It is not proved by the workman that he is entitled for any Scheme of the BSNL as the relation of the workman and the Management is not an existence or proved. To acquire temporary status of Casua: tabour as per Annexure-III the following condition is to be fulfilled:

"5. Temporary Status

(i) Temporary Status would be conferred on all the casual labourers currently employed and who have rendered a continuous service of at least one year, out of which they must have been engaged on work for a period of 240 days (206 days in the case of offices observing fiveday week). Such casual labourers will be designated as Temporary Mazdoor."

But what I found the workman has not fulfilled this condition. Hence, he is not entitled for regularization as casual employee under the BSNL or the Management. In the result, I find the workman is not entitled for any relief and his prayer is rejected.

 Prepare the award and send the same to the authority concerned as per procedure confidentially immediately.

> H. A. HAZARIKA, Presiding Officer নই বিল্লী, 16 সুধার্চ, 2007

करा.आ. 2172.— केन्द्रीय सरकार संतुष्ट हो जाने पर कि लोकहित में ऐसा करना अपेक्षित था, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खण्ड (ह) के तप खण्ड (एं) के तपबंचों के अनुसरण में भारत सरकार के श्रम मंत्रालय की अधिम्चना संख्या कर आ. 268 दिनांक 16-1-2007 द्वारा बैंक नोट मुद्दणालय देवास (प.प्र.) जो कि औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की प्रथम अनुसूची की प्रविष्ट 22 के अन्तर्गत निर्दिष्ट किया पया है, को उक्त अधिनियम के प्रयोजनों के लिए दिनांक 19 1-2007 से छ: मास की कोलाव्यधि के लिए लोक उपयोगी संका कोषित किया था;

और केन्द्रीय सरकार की राय है कि लोकहित में उक्त कालावधि को छ: मास की और कालावधि को लिए बढाया जाना अवेकित है :

अत: अब, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) को शारा 2 के खण्ड (इ) के उप-खण्ड (vi) के परन्तुक द्वारा प्रदत्त शिक्तियों का प्रयोग करते हुए केन्द्रीय सरकार उक्त उद्योग को उक्त अधिनियम के प्रयोजनों के लिए दि. 19-7-2007 से छ: मास की कालावधि के लिए लोक उपयोगी सेवा घोषित करती है।

> [फा. मं. एस-11017/1/2006-आई आर (मीएल)] गुरबोत कौर, संयुक्त सविव

New Dethi, the 16th July, 2007

S.O. 2172.—Whereas the Central Government having been satisfied that the public interest so requires

that in pursuance of the provisions of sub-clause (vi) of the clause (n) of Section 2 of the Industrial Disputes Act, 1947 (14 of 1947), declared by the Notification of the Government of India in the Ministry of Labour S. O. No. 268 dated 16-1-2007 the service in Bank Note Press, Dewas which is covered by item 22 of the First Schedule to the Industrial Disputes Act, 1947 (14 of 1947) to be a Public Utility Service for the purpose of the said Act, for a period of six months from the 19th January, 2007.

And whereas, the Central Government is of opinion that public interest requires the extension of the said period by a further period of six months.

Now, therefore, in exercise of the powers conferred by the provise to sub-clause (vi) of clause (u) of Section 2 of the Industrial Disputes Act, 1947, the Central Government hereby declares the said industry to be a Public Utility Service for the purposes of the said Act, for a period of six months from the 19th July, 2007.

[F. No. S-11017/1/2006-IR (PL)]

GURJOT KAUR, It Secy.

नई दिल्ली, 17 जुलाई, 2007

का, 34. 2173.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) को बारा-1 की उप धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा । अगस्त, 2007 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय-4 (44 व 45 मारा के सिकाय जो पहले से प्रवृत्त हो चूकी है) अध्याय-5 और 6 [चूरा 76 की उपचारा (1) और धारा 77, 78, 79 और 81 के सिकाय जो पहले ही प्रवृत्त की जा चुकी है] के उपचन्ध आन्य प्रदेश राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :—

"आन्ध प्रदेश राज्य के कहमा जिले में स्थित जन्मलमहुगु मण्डल के अन्तर्गत जन्मलमहुगु नगर पालिका के सीमा के अन्तर्गत सभी क्षेत्र एवं मोरगृष्टि सबस्य गाँव ।"

> [सं एस-38013/19/2007-एस.एस.-1] एस. दो. चेल्यिर, अवर सचिव

New Delhi, the 17th July, 2007

S.O. 2173.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st August, 2007 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter V and VI [except sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Andhra Pradesh namely:—

"All the areas falling within the Municipal limits of Jammalamadugu and Revenue Villages of Moragneti of Jammalamadugu Mandal of Kadapa District in Andhra Pradesh."

[No. S-38013/19/2007-S. S. I] S. D. XAVIER, Under Secy.

नई दिल्ली, 17 जुलई, 2007

का,आ, 2174,---केन्द्र सरकार, राजमान्त (संघ के शहसकीय प्रयोजनों के लिए एयोग) नियम, 1976 के नियम 10 की उप-नियम (4) के अनुसरण में निम्नलिखित कार्यालय को, जिनके 80 प्रतिशत कर्मचारियों ने हिन्दी का कार्यसायक ज्ञान प्राप्त कर लिया है, अधिसृष्ठिक करती है ;

क्रम संख्या	कार्यालय का नाम				
l.	आंचलिक प्रशिक्षण संस्थान (उद्दरी अंचल), फरीग्रामन				
2	धेत्रीय सम् अध्यु धत (कोन्द्रीय), चयपुर				
3.	सहस्यक श्रप आयुक्त (केन्द्रीय), कोटा				
4.	शम प्रवर्तन अधिकारी (केन्द्रीय), उदयपुर				
5.	अप प्रवर्तन अधिकारी (केन्द्रीय), जोधपुर				
6.	श्रम प्रसर्तम अधिकारी (केन्द्रीय), नीकानर				
7.	श्रम प्रवर्त्तन अधिकारी (केन्द्रीय), भीलकहा				
&	श्रम प्रवर्त्तन अधिकारी (केन्द्रीव), सवाईमाधोपुर				

[सं. ई-11017/1/2006-सक्ती]

शारदा प्रसाद, संयुक्त सक्तिय

New Delbi, the 17th July, 2007

S.O. 2174.—In pursuance of sub-rule (4) of Rule 10 of the Official Language (Use for official purposes of the Union). Rules, 1976 the Central Covernment hereby notifies following offices, 80% Staff whereof have acquired working knowledge of Hindi:—

St. No. Name of the Office

- Zonal Training Institute (North Zone), Farklahad.
- Regional Labour Officer (Central), Jaipor
- Assistant Labour Officer (Central), Kota
- Labour Enforcement Officer (Central), Udaipar
- Labour Enforcement Officer (Central), JoShper
- Labour Enforcement Officer (Central), Bikaner
- Labour Enforcement Officer (Central), Bhillwara.
- Labour Enforcement Officer (Central), Sawai Madhopur

(No.E-11017/12005-RBN) SHARDA PRASAD, It Secy.

नई दिल्ली, 19 जुलाई, 2007

का, आ., ;2175.— और्टोगिक विकर अधिनियम, 1947 (1947 का 14) की था। 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ रेण्डिया के प्रबोधांत्र के संबद्ध नियोजकों और उनके कर्मकाएँ के बीच, अनुबंध में निर्दिष्ट और्टोगिक विकार में केन्द्रीय सरकार और्टोगिक अधिकरण/अम न्यायालय, चेनई के पंचाट (संदर्भ संख्या 232/2004) को प्रकाशित कर्नती है, वो केन्द्रीय सरकार को 19-7-2007 को प्राप्त हुआ था।

> [सं एल-12012/433/98-आईसमः(ची-1)] अवय कुमार, बेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2175.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government perceby publishes the award (Ref. No. 232/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Amexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government of 19-7 2007.

[No.L-12012/433/98-IR (B-fr]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wéducaday, the 31st January, 2007
PRESENT:

Shri K. JAYARAMAN, Presiding Officer
Industrial Dispute No. 232/2004
(Principal Lubour Court CGID No. 151/99)

(In he matter of the dispute for adjudiation under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act. 1947 (14 of 1947), between the Magnagement of State Bank of India and their workmen)

BRIWEEN

Sri M. Anaoda Babu

: 1Party/Petitioner

AND

The Assistant General Manager, : If Party/Management. State Bank of India.

Z. O. Chennaj.

APPEARANCE

For the Petitioner

: Sri V. S. Ekambaram,

Authorised Representative.

For the Management

: M/s. K. S. Sundar,

Advocates.

AWARD

 The Central Covernment Ministry of Labour, vide Order No. I.-12012/433/98-IR (B-I) dated 10-2-1999 has referred this dispute carrier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. £51/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as 1.D. No. 232/2004.

The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Shri M. Ananda Babu, wait list No.741 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is cruitled?"

The allegations of the Petitioner in the Claim Statement are briefly as follows:

The Petitioner was sponsored by Employment Exchange for the post of sub-staff in Class IV cadre in State Bank of India and he was given appointment as messenger. after an interview and medical examination. He was appointed on temporary basis at Pallavaram branch from 14-3-1983. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/ Bank, in addition to sts counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and Ali India State Bank of India Staff Federation and the settlement is with regard to absorption. of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement. was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitomer about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Brunch Manager of the Pallavaram branch, He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 14-3-1983, the Petitioner has been working as a temporary messenger and sometime performing work in other branches also. While working on temporary basis in Guindy branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. White the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not sequired any more and he seed not attend the office from

1-4-1997. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. lo reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularize him in service. in due course. The Respondent/Bank took up an unreasonable stand that the service and the womber of days worked by Petitioner were treated at of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him. after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G & 25H of the LD. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sastry Award. Even though the actilement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whitns and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either. by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to gradrelief of regular employment in Respondent/Bank with all attendant benefits.

 As against this, the Respondent in its Counter. Statement alleged that reference made by the Govi. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim. Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of LD. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not hone fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait fisted as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/ Bank engaged the temperary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Pederation which resulted in five settlements dated 17-11-1987, 16-07-1988, 07-10-1988, 9-1-1991 and 30-7-1995. The said settlements became subject matter of conciliation proceedings and minutes were drawn under section 18(3) of LD. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait timed as candidate No.735 in wait list of Zonal Office, Chestral, So far 357 wait fisted temporary candidates, out of 744 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messanger. The Petitioner was engaged only in leave vacancies as and when it mose. When the Petitioner baving submitted to aelection process in terms of settlements drawn as per retrenchment provisions referred to above. eannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar. months and under category (C) the temporary employees who have completed 30 days aggregate temporary service. in any calendar year after 1-7-75 or minimum 70 days. aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid. and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The poculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary corployees were appointed and since the Petitioner was wait listed at 735 he was not appointed. The said actifements were bong fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said scattements were not questioned by any union so far and the settlements of bank level sentlements and operated throughout the country. The Tamil Nado Industrial Establishment (Conferencet of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to cotertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employets and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai walt list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expity of wait list, the Petitioner has no claim, for permanent absorption. Hence, for all these teasons, the Respondent prays to dismiss the claim with costs.

- In the additional claim statement, the Petitioner. contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class TV post. He was engaged in the measurger post in the subordinate cadre of the Respondent/Bunk consinuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular in the effect that under no circumstances, wait listed persons like the Petitioned be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed wrojkmen with alterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whichs and fancips. Hence, the Petitioner prays that an award may be passed in his favour....
- 6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated that all the settlements made by the bank with the State Bank of India Staff Federation were under section 18(1) of the Act and not upder section 18(3) of the Act. As per recruitment rules of tile Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.
- In these circumstances, the points for my consideration are:—
 - (i) "Whether the demand of the Petitioner in Wait List No. 741 for restoring the wait list of temporary messengers in the Respondent/ Bank and consequential appointment thereupon as temporary messenger is justified?"
 - (ii) "To what relief the Petitioner is cutitled?"

Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners. in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms. of the relevant guidelines/circulars of the Respondent/Bank. in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary comployees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen. concerned and while the matter was pending in Writ Petition. No. 542 (Civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorbtion of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank. and has been marked as Ex. M l. The Petitioner in this case. and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent. vacancy and Respondent/Bank without any intimation or notice dedied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other uttendant benefits.

On behalf of the Petitioner, it is contended that: these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case. the Petitioner is not bound by settlement under section. 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous. period of 12 calendar months and was not in continuous. service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service. exceeding 200 days, hence the question of Petitioner. working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter VA of the LD. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers. and are eligible to be reinstated. Learned representative for

the Petitioner contended that in 1996 LAB & IC 2248 CENTRAI, BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the LD. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies. but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workings. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and WR as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M 1 and the avenuents of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a 12w deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of "last come—first go' or 'first come- last go' and therefore, the categorization in Clause 1 is iflegal. Clause 1 (a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolles, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. Wa. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Benk on casual busin should not be given. permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of univing at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types. of waiting lists have to be prepared. But the Respondent Bank has alleged to have prepared only one wait list for each module as per Ex.M 10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as E_{A} , MI, M3 and M4 respectively. But, when MW I has spoken about the settlements, he deposed that settlement dated 27-10-38 was put included in the Madrus circle since the High Court order is there, but he has not produced any document in support of the so called noninclusion except his hald statement. Further, according to MW1 wait list under Ex.M10 was prepared on 2-5-92 but

there is no pleading in the Counter Statement with regard to this wall list. Further the Hon ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the tempurary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages. daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Hank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 comparises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after than process of selection and were paid wages on the basis of industry wise settlement, it is not to in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. MB provides for the same norms to the casttals as in the case of temporary employees in the matter. of absorption. Therefore, it is violative of Article 14 & 16 of Constitution of India. Therefore, the Petitioner contended that proparation of Ex. M 10 namely want list is not in conformity with the instructions of Ex.M2 and nonpreparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as perinstructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released / published even after the Court order in WMP No. I 1932/91 in W.P.No. 7672/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-5-88. Purthermore, wait list under Ex.M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective semonity. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Px, M I was not produced. at the time of conciliation proceedings held during the year 1997-98 hold at Chemnai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bunk has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal

clause 2 (eq) of the LD. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitionen has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGHVs, RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies casuals. or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal.' Learned representative further contended that Ex.M 10 wait list has not been prepared in accordance with principle of seniority. In the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. $M10^\circ$ which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment. against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be decined to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document show how he has arrived at the semiority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service. of the Respondent/Bank is arbitrary, mala fide and illegal. and the Respondent/Bank has not acted to " accordance. with the terms of settlement on absorption of temporary employees Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3). settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. MI to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP. No.11932/91, in W.P.No.7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/ Management has examined two witnesses, the deposition of management witnesses thiring the cross examination had become apparent that they have no personal knowledge about the seulements which are marked as Bx. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary jestirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes. post reference period and hence evidence of Respondent/

Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as eashrined under Section 25B and 25F of the Industrial Disputes Act, therefore, their retrenthment from service is illegal and against the mandatory provisions of Section 25. and therefore, they are deemed to be in continuous service. of the Respondent/Bank and they are entitled to the benefits under the provisions of LD. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected LDs have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar. months. He also relied on the rulings reported in 1985 II LLI 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression 'actually worked under the employer' cunnot mean that those days only when the workmen worked with hammer, sickle or penbut must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of stable. standing orders etc. It is further, argued that call letters. produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were desired further engagement. on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days. and more in a continuous period of 12 calendar months. and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed, in such circumstances, this Tribunal has to pass an award in their íavour.

10. But, as against this, the learned senior counsel. for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/abscrption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Section 18(1) and 18(3) of the ID. Act, in lieu of the provisions of law and implemented by the Respondent/ Bunk and the claim of the Petitioners are not bonafide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as perlength of his engagement and could not be absorbed as he was positioned down in the senjority. The Respondent/

Bank was engaging temporary employees due to business. exigency for the performance of duties as messenger. Further, the allegation that he was aponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bunk and the federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement. directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements. and operate throughout the country. Further, he relied on the rulings reported in 1991 HLI 323 ASSOCIATED GLASS. INDUSTRIES LTD, V_8 , INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised. a plea before the Tribunal that they did not resign. voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is hinding on the workmen." Learned counsel for the Respondent further relied on the rollings reported in 1997 \$ 111,11189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSFORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the contribution proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected. to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement," It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. LTD, Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation. proceedings under section 18(1) of the LD. Act and (ii) those arrived at in the course of conciliation proceedings under section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were

members and if there was nothing sureasonable or unfair. in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rolings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter. of yet another industrial dispute which an appropriate Gove. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the belp of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is: alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such discumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt, is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is: contended that mere wording of reference is not decisive. in the matter of renability of a reference and be relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference, Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It forther held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact name of dispute instead.

of refusing to passwer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rutings reported in 1998. LABIC 1664 YANSAG NATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Prodesh High Court has held that "the Tribunal" cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the ridings reported in 1998 LAB IC 1507 A. SAMBAN (HAN Vs. PRESIDING OFFICER, LABOUR) COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical. manner or a perfamile manner, but should consider the order of reference inpulsir and reasonable manner." He also argued that in Express Newspapers P. J.td. case reported in Alk. 1993 SC 569 the Supreme Court has held that "the Tribonal. has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view. it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labout Court " Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/ Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged. by him and whether he is entitled to the back wages as alleged by hith. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is wirhout any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly emered into between the Respondent/Bank and Pederation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. & V.VIIEESH wherein the Supreme Court has held that "the only question which falls for determination in this appear is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt, service in an existing or a future vacancy." In that case, pruning of

select list on reduction in number of vacancies was made. in view of the impending absorption of steam surplus staff. and a policy decision has been taken to reduce the number. of vacancies and consequently, a certain number of bottom. persons were removed from the select list and the remaining. selectees were given appointments appoint in their comparative merits. In which, the Supreme Court has held. that "in such circumstances, demail of appointment to the persons removed from the select list is not arbitrary and discriminatory. THe further relied on the rulings reported in 1997 6 SCC 584 SYNDICA HUBANIK & ORS VE SHANKAR PAUL AND OTHERS wherein the Supreme Court has held. that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment. in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of multision. of their names in the said panel for permanent absorption. in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The ciaim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge. and the Division Beach, when it first decided the appeal. were right in dismissing the Wm Petition and the appeal. respectively." He further relied on the rulings reported in 1991 3 SOC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates." included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Peritioner has no right to question. the wait fist and since there is no inalla fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide. motive. Under such circumstances, after the expiry of the date namely 31 3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS, Vs. PLARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad-hoc temporary employees. who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-heg/. temporary employee who has been continued for one year. should be regularised even though (a) no vacancy is available for him which means creating of a vacancy; (b) he was not sponsored by Employment Exchange nor was heappointed in pursuance of a notification calling for applications which means he had entered by a back door. (c) he was not eligible and qualified for the post at the time. of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied.

upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be beld that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impagned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 DSCC LASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the condidate concerned is appointed in an irregular manner or on ad-hoc besis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in fulfility. It would amount to decorating a still born baby. Under these, circumstances, there was no occasion to regularise them. or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." 'Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave. vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rollings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYAKIHL& ORS VILSTATBOF BIHAR AND ORS, wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the LD. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the LD. Act retrenchment procedure following principle of

'last come - first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retreaching seniors and retaining juniors. Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that "merely because a temporary employee. or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a dne process of selection as envisaged by relevant rules. It is not open to the Coun to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right," Further, it has also held that " it is not as if, the person who accepts an engagement either temporary or essual in name. is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode. of public appointment which is not permissible." Further, the Supreme Court white laying down the law, has clearly held that "unless the appointment is in terms of the relevant raics and after a proper competition among qualified persons, the same would not confer any right on the appointed...... It has to be clarified that merely because a temporary employee or a casual wage worker is continued. for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held-that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further,

in CDJ 2006 \$C 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINT)ER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent. was not in functioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshriped under Article 14 and 16 of the Constitution of India would be word in law." Further, in 2006 ZILÊN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVILOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that fonly. because an employee had worked for more than 240 days. of service by that itself, would not confer any legal right. upon him to be regularised in service. " The Supreme-Court also field that "the changes brought about by the subsequent decisions of this court probably having regard. in the changes in the policy decisions of the Govt, in the wake of prevailing market economy, globalisation, prevatisation and osusourcing is evident, in view of the settled legal position, as noticed hereinhefore."

Relying on all these decisions, learned counsel. for the Respondent contended that since the Petitioner has not been appointed for regular post nor has be been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five sculements lentered into between the Respondent/Bank and l'ederation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities. was only to restore the wait list and also for appointment. thereon as democrary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Peritioner.

I find much force in the contention of the learned. counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements. entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number attotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bosta fide in nature or it has been arrived at on account. of mala fide, misrepresentation, fraud or even corruption or other indicements. Under such circumstances, I find the Peritingers cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary. employees to be absorbed. I find the Petitioners cannot

claim for reinstatement or regularisation in services of the Respondent /Bank.

- 18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.
- 19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim my rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govr, in the wake of prevailing market economy, globalisation, privatisation and outsourcing is avident, I find the Petrioner is not entitled to claim regularisasion or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petrioner.

Point No. 2:

The next point to be decided in this case is to what relief the Petitioner is entitled?

- 20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Perinoner is not entitled to any rehelf as claimed by him. No Costs.
 - 21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by the in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:

For the Petitioner : WWT Sri M Ananda Babo

WW2Sri V. S. Ekambaram

For the Respondent : MWI Sri C. Mariappan

MW2Sri C. Ramalingam

Documents Marked :-

Ex. No. Date Description W1 01-08-88 Xerox copy of the paper publication in daily Thanthi based on Ex. M1. W2 20-04-88 Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1.

		<u> </u>				
W3	24-04-91	Xerox copy of the circular of respondent/ Bank to all Branches regarding	₩ 2I	26- 03-97	Xerox copy of the letter advising selection of part time Menial —G. Pandi.	
		absorption of daily wagers in Messenger vacancies.	W22	31-06-97	Xerox copy of the appointment order to Sri G. Pandi.	
W4	01-05-91	Xerox copy of the advertisement in the Hindu on daily Wages based on Ex. W4.	W23	Feb. 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list	
W5	20-08-91	Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wagers.	W24	13-02-95	No. 395 of Madurai Circle. Xerox copy of the Madurai Module Circular letter about Engaging temporary	
W6	15-03- 97	Xerox copy of the circular letter of Zonal Office, Chennai About filling up of vacancies of messenger posts.	W25	09-11-99	comployees from the panel of wait list. Xerox copy of the Flead Office circular No. 28 regarding Norms for smetton of	
W7	25-03-97	Xeros copy of the circular of respondent/ Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.	₩2 6	09-07-92	messenger staff. Xerox copy of the manutes of the Bipartite meeting.	
W8	M	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work.	W27	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms-creation of part time general attendants.	
W9	07-04-86	Xerox copy of the service certificate issued by Pallavaram Branch.	W28	07-02-06	Xerox copy of the local Head Office circular about Conversion of part time	
WiO	01-10-91	Xerox copy of the service certificate issued by Guiody branch.			employees and redesignate them as general attendants.	
WII		Xerox copy of the service certificate issued by Guindy branch.	W29	31-12-85	circular about Appointment of temporary employees in subordinate	
WI2	18-03-96	Xerox copy of the service certificate issued by Guindy branch.	The st	cadre. For the Respondent/Management:—		
WI3	23-09-96	Xerox copy of the service certificate issued by Guindy branch.		o. Date	Description	
W14	03-07-89	Xerox copy of the interview letter.	MI	17-11-87	Xerox copy of the settlement.	
WIS MI	Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate	M2	16-07-88	Xerox copy of the settlement.	
			M3	27-10-88	Xerox copy of the settlement.	
			M4	09-01-91	Xerox copy of the settlement.	
		care and service conditions.	M5	30-07-96	Xerox copy of the settlement.	
WI6	Nil	Xeros copy of the reference book on Staff matters. Vol. III consolidated up to 31-12-95.	M6	09-05-95	Xerox copy of the minutes of conciliation proceedings.	
W!7	06-03-97		M 7	28-05-91	Xerox copy of the order in W.P. No.787291.	
	post-V. Muralikannan.	M8	15-05-98	Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa.		
WI8	06-03-97	Xerox copy of the call letter from Madurai zonal office For interview of messenger post—K. Subburaj.	М9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.	
W19	06-03-97	zonal office For interview of messenger	M10	Nal	Xerox copy of the wait list of Chennai Module.	
W2 0	17-03-97	post—J. Velmorugan. Xerox copy of the service particulars-J. Velmurugan.	MII	25-10-59	Xerox copy of the order passed in CMP No.16289 and 16290/99 in W.A. No. 1893/99.	
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नई दिल्ली, 1**9 जुलाई,** 2007

का.श्रा, 2176.—ऑहोपिक विवाद अधिनियम, 2947 (1947) का. 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बेंक ऑफ इंग्डिश के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कमेंकारों के बेंच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, धेपई के जेनाट (लंदर्भ संख्या 250/2004) को प्रकाशित काती है, जो केन्द्रीय सरकार को 19 7-2007 को प्राप्त हुआ था।

> [सं रल ।2012/452/98: आईआर(बी-1)] अनर कुपार, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2176.— In pursuance of Section 17 of the industrial Disputes Act. 1947 (14 of 1947), the Central Government Industrial Tribunal-cum Labour Court. Chemial as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 19-7-2007.

[No.L-12012/452/98-JR (B-t)]

AJAY KUMAR, Desk Officer

ANNEXURE:

BEFORE THE CENTRAL GOVERNMENT INDESTRIAL TRIBUNAL-CUM-LABOUR COURT. CIENNAI

Wednesday, the 31st January, 2007
PRESENT:

Shri K. JAYARAMAN, Presiding Officer Industrial Dispute No. 250/2004

(Principal Labour Court CGID No. 190/99).

(In the matter of the dispute for adjudiation under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act. 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BEIWKEN

Sri S. Sukumaran

: IParty/Petitioner

AND

The Assistant General Manager, : If Party/Management State Bank of India,

O. Chemsai,

APPEARANCE

For the Petitioner.

: Sri V. S. Ekambarani,

Authorised Representative.

For the Management

: M/s, K. Veeramani,

Advocates.

AWARD

1. The Central Government Ministry of Labour, vide Order No. L-12012/452/98-1R (B-I) dated 12-3-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 190/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as LD.No. 250/2004.

The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Shri S. Sukumaran, want list No.442 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as remporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:

The Petitioner was sponsored by Employment Exchange for the post of sub-staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Thousand lights, beauch from 1982. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others become subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Peration No. 542/87 which was taken up by the Supreme Court. The Respondent/ Bank, in addition to its counter, filed a copy of sentement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption. of Class IV temporary workings who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A,B and CThough the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the thousand lights branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Peritioner was informed enally to join at the branch where he initially worked as a class IV employee, From 1982, the Petitioner has been working as a temporary messenger and some time performing work in other branches also. While working on temporary basis in Nungambakkam branch, another advertisement by the Respondent/Bank was made regarding casual workers who were preported to be inservice during the same period. While the Peririones was working as such, the Manager of the branch informed the Potitioner orally on [31-3-1997 that his services are not required any more and he need not artend the office from i. 4. 1997. Hence, the Petitioner raised a dispute with regard. to his inn employment. Since the conciliation ended in

failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal. the reference framed did not satisfy the grievance of the Perinioner, he has mude a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularise him in service. in due course. The Respondent/Bank took up an aureasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the condition officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G & 25H of the LD. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has heen prepared and the Respondent/Bank has been Regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, readical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Peritioner and extracted the same work either by payment of perty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait his suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant herefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of LD. Act in lieu of provisions of isw, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait histed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/ Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was exponsed by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 07-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of 1.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No.443 in wait list of Zonal Office, Chennai. So far 357 wort listed temporary candidates, out of 744 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in letture of settlements drawn as per retreactment provisions referred to above. cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and bence, they were appointed. Under the settlement, employees were categorised as A,B, and C. Considering their temperary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in Decomber, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid. and enforceable right for appointment. The Respondent had implemented the voluntary retirement acheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not inregular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed condidates, 357 temporary employees were appointed and since the Petitioner was wait fisted at 443 be was not appointed. The said settlements were bong fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the actilements. of bank level settlements and operated throughout the country. The Tamii Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto

- 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim; for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.
- In the additional claim statement, the Petitioner. contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Politioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under not circumstances, wait listed persons like the Petitioned be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons. other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passedlin his favour.
- 6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner grays that an award may be passed in his favour.
- Ib these circumstances, the points for my consideration are:
 - (i) "Whether the demand of the Petitioner in Wait List No. 442 for restoring the wait list of temporary messengers. In the Respondent/ Bank and consequential appointment thereupon as temporary messenger is justified?"
 - (ii) To what relief the Petitioner is entitled?

Point No. 1:

- 8. In this case, on behalf of the Petitioner at is contended that the Peritioner in this case and the Peritioners in the connected industrial disputes have been sponsored. by Employment Exchange and they having been called for interview and having been selected and wait listed in terms. of the relevant guidelines/circulars of the Respondent/Bank. in permanent vacancies. In suburdinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several remporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen. concerned and while the matter was pending in Writ Petition. No. 542 (civil) 1987, the Respondent/Bank hurrically entered into a settlement on the issue of absorbtion, of temporary employees and filed it before the Supreme Court 4) the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. Mt. The Petitioner in this case. and the Petitioners in the connected cases anacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent. vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the Jabour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with hack wages and other attendant benefits.
- 9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees. in the Respondent/Bank under the guidelines and circulars. issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case. the Petitioner is not housed by settlement under Section. 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of street instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees. at branches/offices are not allowed to be in service. exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V A of the LD. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retrenched messengers. and are eligible to be reinstated. Learned representative for

the Pectioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Coun has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 251/applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retreached workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the curvular instructions of the Respondent/Bank issued from time to sime in connection with the implementation of the settlements on absorption and which are standary in character. Further, a combined study of Ex.Ml and the averments of MWI and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Eq. M4 deals with categorization of retrenched temporary employees into 'A, B and C', but this caregorization of 'A. B & C' is quite opposed to the doctrine of 'last come | first go" or first come— last go" and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepgay etc. for absorption along with the other eligible categories. of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters. copy of which is marked as Fix.W8. Further, the appointment of duity wage basis for regular messengerial jobs etc. are strictly prehibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories as not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuats were given more beneficialtreatment in the matter of arriving at qualifying service for interview and selection. Bur, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have propered only one wait list for each module as per $\mathbb{E}_{X}M$ Win this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW.1 is unable to say as to when the wait list Ex.M10 was propared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.MI, M3 and M4 respectively. But, when MW1 has spoken about the scalingents, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his hald sintement. Further, according to MW1 wait list under

Ex.M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon ble High Court has held in its order dated 23-7-99. in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class TV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category. who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered. under 1987 settlement and 1988 settlement since they fromed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India," Further, the averment of MW1 and the statements in Counter Statement are comrany to the above and it is nothing but a desposate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing emgls with unequals. It is further contended on behalf of the Petitioner that as per deposition of MWT wait list under Ex.M10 comparises of both messengerial and nonmessengecial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and dispinct categories. But, Ex.M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M 10 namely wait list is not incomformity with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular, Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no want list was released/ published even after the Court order in WMP No. 11932/ 91 in W.P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait hat under Ex.M10 does not carry particulars about the candidates date of initial appointment and the number of days pur in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions. and ceased to have the credibility attached to the wait list. Above all, Ex. M. I was not produced at the time of concitiation proceedings held during the year 1997-98 held. at Chennai and Madwai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement On absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device.

to take them, out of the principal clause 2 (on) of the LD. Act, 1947. Though the Petitioner's work in the Respondent. Bank is confinence and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985.4 SCC 201 JLD, SINGH Vs. RESERVE BANK OF INDIA AND OTTERS wherein the Supreme Coor, has held that tito employ workmen as 'badlies' casuals or temporaries and to confinue them as such for many years with the object of depriving them of the status and privileges of permanent, worknier, is illegal." Learned representative further contended that Ex.M 10 wait list has not been prepared in accordance with principle of seniority to the legal sense, since the selected candidates with longest service should have priority over those who joined the service letter and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement. but in atteriviolation and in breach of it. Though clause Die of Ex. M4 states that candidates found suitable for permaners appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be decined to have refused it and the name shall stand deleted from the respective panel and he shall have no forshor claim for being considered for permanent appointment in the bank. The Respondent/Bank has not 'produced any document show how he has arrived at the semority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the aventions of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/ Bunk as arbitrary, mala fide and illegat and the Respondent/ Bank has not acted in " accordance with the terms of settlement on absorption of hemporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings date:1 § 6-75 her\u00e4re Regional Lahour Commissioner (Central). Hyderahad, it is neither a 18(3) settlement not 12(3) settlement as claimed by the Respondent/Bank whatti says. andy with regard to modify atom of the MI to M4 reads in terms of Ex. M6. Though the Respondent/Bank produced Ex. 337 and M11 interim orders passed by High Court of Madras in WMP No.11932/91 in W.P. No. 7872/91 ceased to have anymele vance when the main writhas been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Peririoner. Further, though the Responding Management has examined two witnesses, the deposition of management witnesses during the crossexamination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and bence evidence

of Respondent/Bank has so application to the Petitioner's case. The Peritioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Section 25B and 25F of the Industrial Dispines Act, discrefore, their retrenchment from service is allegal and against the mandatury provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they see entitled to the benefits under the provisions of LD. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected LDs have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitionals have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the culings reported in 1985 II (LJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION ${f V}_{S}$ MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression factually worked under the employed cannot mean that those days unity when the workanes; worked with hammer, sickle or peabut must necessarily comprehend all those days during which they were in the mapleyment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute. standing orders etc. It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrendiment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were defied further engagement on account of settlements/lapsing of wait lists and out of these Peritingers some of them have completed 240 days and more in a communas period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they (and themselves knapped in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their tavour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Section 18(1) and 18(3) of the ID. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bonatide and are made with ulteriax metive. Further, they have concealed the material facts that the Petitioner was wait listed as per

length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/ Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Forther, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bonafide which were the only workable solution and is hinding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements. and operate throughout the country. Further, he relied on the rulings reported in 1991 (LJ 323 ASSOCIATED GLASS) INDUSTRIES UTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign volumarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the sentement is binding on the workmen." Learned counsel for the Respondent further relied on the rollings reponed in $1997 \,\Pi\,I.3.J\,1189$ ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the concitation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity. of sattlements reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective burguining is entitled to due weight and consideration." Learned coursel for the Respondent further relied on the rulings reported in 1997 I LLL 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two caregories namely (i) those arrived at outside the conciliation proceedings under section 18(1) of the LD. Act and (ii) those arrived at in the course of conciliation proceedings under section 18(3). A settlement of the first category has limited application and hinds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even

in case of the first entegory, if the settlement was reached. with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the, rulings reported in AJR 2000 SC 469. NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bong fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements is could be subject matter of yet another industrial dispute which an appropriate Govt, may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel. for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement. and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demant of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrendment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt, is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that more wording of reference is not decisive in the matter of tenability of a reference and he relied on the rutings reported in 1998 LAB IC 345 SECRETARY, NOLLAM JILLA HOTLL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "more wording of reference is not decisive in the matter of tenability of a reference. Liven though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery

again." It fugher held that "the Tribunal should look intothe pleading and find our the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead. of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitroner is to be reinstated in service. or not for which he rehed on the rulings reported in 1998. LABIC 1664 MANSAGNATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBLINAL & ORS. wherein the Madbya Praffesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507. A.SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR. COURT, MADRAS, wherein it has been held that fit has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner of a gedantic manner, but should consider the order of reference ip a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR. 1993 SC 569the Supreme Court has held that "the Tribunal. has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Peritioners have been retrenched from the Respondent/ Bank and therefore, this Tribunal con kook into the pleadings. of the Petitioners and can decide whether the Petitioner is entitled to he reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VIJEESH wherein the Supreme Court has held that "tipe only question which falls for determination."

in this appeal is whether a candidate whose name appears. in the select list on the basis of competitive examination. acquires a right of appointment in Govt, service an anexisting or a future vacancy." In that case, pruning of salect list on reduction on number of vacancies was made. to view of the impending absorption of steam surplies staff. and a policy decision has been taken to reduce the number of vacuaties and consequently, a certain number of bottom. persons were removed from the select list and the remaining. selectees were enten appointments according to their comparative merits. In which, the Supreme Court has held: that "in such circumstances, demail of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS, V£ SHANKAR. PAUL AND OTHERS wherein the Supreme Court has held. that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not toconfer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion. of their names in the said panel for permanent absorption. in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, measuresized and therefore, the learned Single Judge and the Division Bench, when a tirst decided the appeal were right in dismissing the Writ Perition and the appeal. respectively." He further relied on the rulings recorred in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF UNDIA wherein the Supreme Court has held that "candidates." included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Permoner has no right to question. the want list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide. motive. Under such discumstances, after the expiry of the date namely 31 3-1997, the Petitioner cannot plead for restoration of the wart list and he cannot pray for reinstatement as alleged by him. Further, he relied on the odings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS, VS. PLARASINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc / temporary employee who has been continued for one year. should be regularised even though (a) no vacancy is available for him which means creation of a vacancy: (b) lsewas not sponsored by Employment Exchange nor was he appointed in pursuance of a nonfication calling for applications which means he had entered by a hack door

(c) he was not eligible and qualified for the post at the time. of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere commutation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 ILSCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available, vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a nonexisting vacancy would never survive for consideration. and even if such purported regularisation or confirmation. is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was not occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nulliny." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the LD. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are

only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the LD. Act retrenchment procedure following principle of 'last come - first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors. Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/ Bank. Any how, if the Pentioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with casts.

Learned Sernor Advocate further argued that even. in recent decision reported to 20064 SCC 1 SECRETARY. STATE OF KARNATAKA Vs. UMA DEVI, the Supreme. Court has held that merely because a temporary employee. or a casual wage worker is continued for a time beyond the term of his appointment, he would not be enritled to be absorbed in regular service or made permanent metely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do on acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature. is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities. and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another noode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly. held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued. for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made. permanent merely on the strength of such continuance, if the original appointment was not made by following a dueprocess of selection as envisaged by relevant rules. Further, in CDJ 2006 SC 443 NATIONAL FERTU IZERS LTD. AND

OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported. period of protestion would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUIANPUR VA. SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Article 14 and 16 of the Constitution of Judia would be youl in law." Further, an 2006 2 LLIN 89 MADINYA PRADESH STATE AGRO-INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that "misy because an employee had worked for more than 240 days or service by that itself, would not confer any legal right. upon him to be regularised in service." The Supreme Court 4:50 held that "the changes brought about by the subsequent decisions of this court probably having regard. to the changes in the policy decisions of the Govt, in the 4.5ke of prevailing market economy, globalisation, H:varisation and outsourcing is evident, in view of the seitled legal position, as noticed hereinhefure."

Relying on all these decisions, learned counsel. the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appropried in regular vacancy or sanctioned post, the Petit oper is not entitled to claim regularisation of his service. Further, when they have not been questioned the five sentiments entered into between the Respondent/Bank and finderation and since they have not questioned the whit like propared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Faither, their prayer before the labour authorities. was only to restore the wait list and also for appointment. sharean as temporary messenger as per wait list. Under such throughstances, after expiry of the period mentioned. in the solideforms which were subsequently amended by anthon in the Petitioners cannot now question either. the inconstraints of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I flustime the force in the contention of the learned courses the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to increasing of wair list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, droy have not questioned the settlement nor the number alletted to each individual in the wair list. The time, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona face in nature or it has been arrived at on account of mala fide this representation, fraud or even corruption or other

inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent /Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and beace, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Grivi, in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident. I find the Petitioner is not entitled to claim regularisation or reinstancment in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2:

The next point in be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitooner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work. I find the Petitioner is not entitled to any rehelf as claimed by him. No Costs

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer.

Witnesses Examined:

For the Petitioner WW I Sri S. Sukumaran

WW2Sri V. S. Ekamberami

For the Respondent MW1 Sri C. Mariappan

MW2Sri C. Ramalingam

Documents Marked :-

Ex. No. Date		Description	
WI	20-08-88	Xerox copy of the Madras L.H.O. Stase Circular No. PER/IR/18/88 regarding wait lists and projected vacancies.	
W2	1-8-83	Xerox copy of the notice to the temporary employees based on the Settlement di. 17-11-1987 "Daily Thanthi".	

		·			
W 3	3 1 4 9 1	Xerox copy of the Madras LHO Circular No. 6 (91-92) regarding absorption of daily wagers in messenger vacancies.	W19	17-03-97	Xerox copy of the service particulars— I. Velmurugan
W 4	01-05-91	Xerox copy of the Notice to the Daily wagers based on the Settlement dated 27-10-1988—"The Hindu".	W20	26-03-97	Xerox copy of the letter advising selection of part time Menial— G. Pandi
ws	20-08-91	Xerox copy of the Forther Notice to the	W 21	31-03-97	Xerox copy of the Appointment Order to G. Pandi
		Daily Wagers extending the period of qualifying service of eligibility—"The Hindu".	W22	F cb '2005	Xerox copy of the Pay Slip of T. Sekar for the month of February 2005 wait list No. 395.
W6	15-03-97	Xerox copy of the Chémnai Zonal Office letter about filling up of vacancies of sanctioned massenger posts for the years 1995 & 1996.	W2 3	13-02-95	Xerox copy of the Madurai Module Circular Letter—engaging temporary employees from the panel of wait list.
W7	25-03-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding indentification of massenger	W 24	09-11-92	Xerox copy of the Circular No. 28 Norms for sanction of messenger staff.
		vacancies and filling them before 31-3-97.	W25	09-07-92	Xerox copy of the Minutes of the Bipartite Meetting.
W8	.N⊓	Xerox copy of the Casuals should not be engaged to do messengerial work— Reference Book on Staff matters	W26	09-07-92	Xerox copy of the Settlement for implementation of norms creation of part time general Attendants.
W9	07-12-84	(consolidated upto 31st December, 1993) Kerox copy of the service certificate issued by Thousand Light Branch.	W27	07-02-06	Xerox copy of the Conversion of part time corployees and designate them as General Attendants.
W 10	14-08-96	Xerox copy of the service certificate issued by Ayanavaram Branch.	W28	31-12-85	Xerox copy of the Staff circular : PER/ IR/68/85—Tempprary employees.
W11	12-02-96	Xerox copy of the service certificate issued by Anna Nagar West Branch.	For the Respondent/Management:—		ent/Management :
W12	31-06-97	Xerox copy of the service certificate	Ex. No	o. Date	Description
	20.04.00	issued by Nungambakkam Branch.	Mi	17-11-87	Xerox copy of the settlement.
W13	03-06-97	Xerox copy of the service certificate issued by Saidapet Branch.	M2	16-07-88	Xerox copy of the settlement.
W14	N	Xerox copy of the Reference Book on	MB	27-10-88	Xerox copy of the settlement.
		Staff Maners consolidated upto 31-12-1984 Volume II Chapter LXVII—	M4	09-01-91	Xerox copy of the settlement.
		Temporary employees in the subordinate cadre—Guidelines.	M 5	30-07-96	Xerox copy of the settlement.
Wt5	Nãi	Xerox copy of the Reference Book on Staff matters consolidated upto	M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
		31-12-1993 Volume II, Chapter 39— Guidelines for appointment of temporary	M7	28-05-91	Xerox copy of the order in W.P. No.7872'91.
W16	06-03-97		MB	15-05-98	Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa.
	D. C. D. D.	Zonal Office for interview of messenger post—V, Muralikannan.	м9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
W ! 7	06-03-97	Xerox copy of the call letter from Madurai Zonat Office for interview of messenger post—K. Subburaj.	MIO	Nik	Xerox copy of the wait list of Trichy Module.
Wi8	06-03-97	Xerox copy of the call letter from Madurai Zonal Office For interview of messenger post—J. Velmurugan.	MII	25-10- 99	•Xerox copy of the order passed in CMP No.16289 and 16290/99 in W.A. No.1893/99.

नई दिल्ली, 19 जुलाई, 2007

का,आ, 2177.— औद्धोगिक विवाद अभिनियम, 1947 (1947 का: ;4) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, स्टेट मैंक ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण:श्रम न्यामालय, चेनई के पंचाट (संदर्ध संख्या 249/2004) की प्रकाशित करती है, जो केन्द्रीय सरकार कर 19-7-2007 जी प्राप्त हुआ था।

[सं एल 12012/45]/98-आईआर(बी]) ; अजय कुमार, द्वेस्क अधिकारी

New Delhi, the 19th July, 2007.

S.O. 2477.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award. (Ref. No. 249/2004) of the Central Government, Industrial Tribunal constration Court, Chemnal as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 19-7-2007.

[No. L-12012/45]/98-JR (B-H)

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAL

> Wednesday, the 31st January, 2007 PRESENT:

Shri K. JAYARAMAN, Presiding Officer 14dustrial Dispute No. 249/2004

(Principal Labour Court CGID No. 188799)

(In he matter of the dispute for adjudiation under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri. J. L. Alexander

: 1 Party/Petisioner

AND

The Assistant General Manager, Il Party/Management State Bank of India.

Z. O. Changan.

APPEARANCE

For the Petinicaser

: Sri V S, Ekamburani,

Authorised Representative

For the Management

: M/s, K. Veeramani.

Advocates

AWARD

 The Central Government Ministry of Labour, vide Order No. 1, 12012/451/98-TR (B I) dated 12-3-1999 has referred this dispute earlier to the Tamil Nado Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 188/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT cum labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal bas numbered it us I.D.No. 249/2004.

The Schedule mentioned in that order is as follows:

"Whether the demand of the workman SariM, Dhansuraj, wait list No.461 for restoring the wart list of temporary messengers in the establishment of State Bank of India and consequential appointment, thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

 The allegations of the Petitioner in the Claim Statement are briefly as follows:

The Peritioner was sponsured by Employment Exchange for the post of sub staff in Class IV gadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Tamburam branch from 9-6-1984. The Petitioner was orally informed that his services. were no more required. The non-employment of the Peritioner and others became subject matter before Supreme Court in the form of Writ Perition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Hank, in addition to its counter, filed a copy of sentement under section 18(1) reached between management of Stare Bank. of India and All India State Back of India Staff Federation. and the semienters is with regard to absorption of Class JV. temporary workmen who were cented employment after 1985-86 were classified in the settlement was under enosideration once again and they classified the workmen. under three categories namely A. B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview. to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Mannadi branch. He was called for an interview by a Committee appointed by Respondent/ Bank in this regard. But, they have not informed the result. of interview and also with regard to appointment. But, the Petitioner was informed craffly to join at the branch where he initially worked as a class IV employee. From October, 1981, the Petitioner has been working as a remporary. messenger and sumetime performing work in other branches. also. While working on temporary basis in MRI, branch, another advertisement by the Respondent/Bank was made regarding caseal workers who were ireported to be inservice during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 34-3-1997 that his services are not

required any more and he need not attend the office from 1-4-1997. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularise him in service. in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of semiement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular. service is unjust and illegal. Further, the sertlements are repugnant to Section 25G & 25H of the I.D. Act. The termination of the Petitioner is against the previsions of Para 522(4) of Sastry Award, Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been Regularising according to their whim and fancies. The Respondent/Bank has also not observed the matructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to untain labour practice. The wait list suffers serious infirmities and it is not based no strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

 As against this, the Respondent in its Counter. Statement alleged that reference made by the Govt, for unjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of LD. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioper is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/ Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those

employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff. Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 07-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under section 18(3). of J.D. Act. In terms thereof, the Petitioner was considered. for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No.720 in wait list. of Zonal Office, Chennai. So (at 357 wait listed temporary candidates, out of 744 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary. messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed, Under the settlement, employees were categorised as A, B and C. Considering their remporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees. who have completed 30 days aggregate temporary service. in any calendar year after 1-7-75 or minimum 70 days. aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list. was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upro 31-12-1994. The Petitioner has no validand enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary. employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 720 he was not appointed. The said settlements. were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements. of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act. 1981. does not apply to Respondent/Bank and this Tribunal has no jurisdiction to cotestain such plea. It is not correct to say that documents and identity of Petitioner was verified

before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

- In the additional claim statement, the Petitioner. contended that he was baving been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously. with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services. of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with alterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons. other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.
- 6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Feddration were under section 18(1) of the Act and not under section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions taid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No. 1872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner, Hence, the Petitioner prays that an award may be passed in his favour.
- 7. In these circumstances, the points for my consideration are:
 - (i) "Whether the demand of the Petitioner in Wait List No. 737 for restoring the wait tist of temporary messengers in the Respondent/ Bank and consequential appointment

- thereupon as temporary messenger is justified?"
- "To what relief the Peritioner is entitled?"

Point No.1:

- 8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners. in the connected industrial disputes have been sponsored. by Employment Exchange and they having been called for injerview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary. basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Cours to protect the legal and constitutional rights of the workmen. concerned and while the matter was pending in Writ Petition. No. 542 (Civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court. at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank. and has been marked as Ex. Ml. The Petitioner in this case. and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected to the permanent. vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute inthe year 1997 before the Jabour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstarement with back wages and other attendant benefits.
- 9. On behalf of the Peritioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars. issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any sendement in this regard is redundant and in any case. the Petitioner is not bound by sentement under section. £8(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Hank has stated that the Petitioner has not worked for more than 240 days in a continuous. period of 12 calendar months and was not in continuous. service on 17 11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not sillowed to be in service exceeding 200 days, hence the question of Petitioner. working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V A of the LD. Act and it is preposterous to contend that the

Peritioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the J.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies. but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.Ml and the averments of MWI and MW2 and their testimonies during the gross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause Pof Ex. M1 deals with categorization of retrenched temporary employees into 'A. B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go" or first come - last go" and therefore, the categorization in Clause I is illegal. Clause I (a) of Ex.MI provides an apportunity to persons who were engaged on casual basis. and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jubs etc. are strictly prohibited as per bank's circulars/instructions. In such direumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial weatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex.M 10. in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was orepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-9) which are marked as Ex.Ml, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was

not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his baid statement. Further, according to MW1 wait list under Ex.M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon ble High Court has held in its order dated 23-7-99. in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 actilement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Purther, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpension by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 comparises of both messengerial and nonmessengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 & 16 of Constitution. of India. Therefore, the Petitioner contended that preparation of Ex.M 1 namely wait list is not inconformity with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released / published even after the Court order to WMP No.11932/91 in W.P.No.7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held. at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunat marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at

the time of initial appointment that their appointment was in leave viscancy. Further, even before or after the settlement. on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the priveipal clause 2 (65) of the LD. Act, 1947. Though the Petitioner's work in the Respondent: Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the tolings reported in 1985 4 SCC 2011LD, SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badiles' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have pridrity over those who joined the service letter and therefore; the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law, Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Fx. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy. anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Hank has not prochated any document show how he has arrived. at the sedionty and till date, it is a mystery as to who that senior was and there is no documentary evidence in support. of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala. fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. MI to M4 made in terms of 2x M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No.11932/91 to W.P. No.7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any hearing in the case of the Petitioner. Further, though the Respondent/ Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5.

Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/ Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under section 25B and 25F of the Industrial Disputes Act, therefore, their retreachment from service is illegal and against the mandatory provisions of Section 25. and therefore, they are deemed to be in continuous service. of the Respondent/Bank and they are entitled to the benefits. under the provisions of LD. Act, it is further contended on behalf of the Petitioner that though some of the Petitioners. m the connected I.Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 24ff days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II. ILI 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION V_{K} MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression 'actually worked under the employer "cannot mean that those days." only when the workmen worked with hammer, sickle or penbut must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. It is further, argued that call letters. produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1990s but were denied further engagement. on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days. and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault. of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counselfor the Respondent/Bank contended that the reference
made by the Government itself is not maintainable in view
of the facts and circumstances of the case. The Petitioner
in this case and the Petitioners in the connected disputes
were not in continuous service. Hence, the question of
regular appointment/absorption does not arise at all and
their engagement was not authorised. Further, the
Petitioners are estopped from making claim as they had
accepted the settlements drawn under the provisions of
Section 18(1) and 18(3) of the I.D. Act, in lieu of the

provisions of law and implemented by the Respondent/ Bank and the claim of the Petitioners are not bounfide and are made with olicator motive. Purther, they have concealed the material facts that the Peritioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/ Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by my union and the settlements were bank level settlements and operate throughout the country. Parther, he relied on the rulings reported in 1991 HLL J 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND O'(HERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribanal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by froud, misrepresentation or coercian, the settlement is binding on the workmen." Learned coupsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS VS. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a sentlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 | 11LJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the LD. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A sentement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on for contesting workmen also." He further relied on the culings reported in AIR 2000 SC 469 NATIONAL ENGINEERING ENDUSTRIES LTD. Vs. STATE OF RAIASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not born fide in maters or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations. as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contraded that though it is alleged that they are not parties to the actilement, since the federation in which the Petitioner is also one among them, they have entered into scittement with the bank and therefore, it is binding on the Petitioner. Purther, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and be is astopped from disputing the STORE.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected dispotes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retransfument made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt, is not valid. Further, in this case, the Court has to-see whether the restoration of wait list can be rande as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of temblility of a reference and he relied on the rulings reported in 1998 LAB K: 345 SECRETARY. KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of temblility of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the

material before it, it has only on duty and that is to decide the points on merits and not to find our some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LABIC 1664 VANSAGNATHAN ORIENT PAPER MILLS Va INDUSTRIAL TRIBUNAL & ORS. wherein the Madbya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the folings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESEDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical minmer or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "The Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should donsider the order of reference in a fair and reasonable manaer, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retreached from the Respondent/ Bank and abecefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner & entitled to be reinstated in service as alleged by him and whether he is emitted to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference id without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Hank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept if the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he

should be reinstated in service and he relied on the milines. reported in 1996 3 SCC 139 LINION OF INDIA AND OTHERS Vs. K.V.VIJEESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Gove service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made. in view of the impending absorption of steam surplus staff. and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom. persons were removed from the select list and the remaining selectors, were given appointments according to their comparative merits. In which, the Supreme Court has held. that "in such direumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 19976SCC584SYNDK:ATE BANK & ORS Vs.SHANKAR PAUL AND OTHERS wherein the Supreme Court has held. that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption. in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, miscenceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right to dismissing the Writ Petition and the appeal. respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question. the wait list and since there is no male fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with male fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstamment as alleged by him. Further, he relied on the tulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad-hor temporary employees. who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc/ temporary employee who has been continued for one year. should be regularised even though (a) no vacancy is

available for him which means creation of a vacancy; (b) he was not aponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door, ;(c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the merecontinuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of humb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees. who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant. facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impureed directions must be held to be totally untenable and unsustainable. Thus, the Successe Court set aside the orders. of Lower Courts. He further relied on the decision reported. in 1997 ILSCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Pull Bench. of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation. or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a mility." "Therefore, learned counsel for the Respondent contended that these temporary employees were appointed. only due to exigencies and they have not appointed against. any regular vacancy and they have only appointed in leave. vacancies and therefore, they are not emitted to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHIJ KUMAR VIDYAKTHI & OKS V£ STATE OF BIHAR AND ORS, wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these

circumstances, their disengagement from service cannot be construed to be a netrenchment under the LD. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajusthan High Court has held that "Under Section 25G of the LD. Act retrencionent procedure following principle of "last come-first go" is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retreaching seniors and retaining juniors. Though in this case, the Petitioner has alleged that his junious have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/ Bank. Any how, if the Petitioner has shown anything, the Respondent/Brak is ready to establish the fact before this. Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank campot be given to the Petitioner and, therefore, the claim is to be dismissed with coals.

Learned Segior Advocate further argued that even in recent decision reported in 2006 4 SCC | Secretary, State of Kamataka Vs. Uma Devi, the Supreme Court has held that metely because a temporary employee or a causal wage. worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength. of such continuence, if the original appointment was not made by following a due process of selection as envisaged: by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees. whose period of employment has come to an end or of adbut coupleyers who by the very nature of their appointment, do not acquire any right." Further, it has also held that "It is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the camployment with open eyes. It may be true that he is not in a position to bacquin not at arms length since he might have been searching for some employment so as to else out his livelihood and accepts. whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpensate illegalities and to take the view that a person who has temperarily or casually got comployed. should be directed to be continued pertainently. By doing so, it will be creating another mode of public appointment. which is not permissible." Further, the Sopreme Court while laying down the law, has elearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on

the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by refevent rules. Further, in CDJ 2006 SC 443 National Fertificers Ltd. and Others Vs. Somvir Singh, wherein the Supreme Court has held that "regularisation." furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a stallify, the question of confirmation of an employee. spon the expiry of purported period of probation would not arise." Psycher, in CD1 2006 SC 395 Municipal Council., Sugaspur Vs. Surinder Kamar, the Supreme Court has held. that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its complayees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in **violation of constitutional** scheme explained under Article 14 and 16 of the Constitution of India would be void in law." Purtier, in 2006 2 LLN 89 Maditya Pradesh State Agro Industifies Development Corporation Vz. S.C. Pandey wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer my legal right upon him to be regularised in service." The Supreme Court size held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Covernment in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

Relying on all these decisions, learned counsel. for the Respondent contended that since the Peritioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Purther, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not emitted to dispute the same and they are estopped from doing to. Purther, their prayer before the labour authorities was only to restore the wait list and also for appointment. thereon as iproporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allosted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel the Respondent. Though in the Claim Statement, the Petitioners have made to many allegations with regard to preparation of wait has end also settlements contact into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Peditioners have not questioned the settlement

and they have not alleged that settlement was not a bonafide in nature or it has been arrived at on account of malafide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

Further, the representative for the Petitioner. contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and beace, the Petitioners are estided for the same relief.

But, I find since the Supreme Court has held that. temporary employees are not intitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar. months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme. Court probably having regard to the changes in the policy. decisions of the Government in the wake of prevaiting market economy, globalisation, privatisation and outsourcing is evident, I find the Peritioner is not entitled to claim regularisation or reinstatement in the Respondent/ Bank as alleged by him. Therefore, I find this point against the Pethfoner.

Point No. 2:

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on. the strength of such continuance of work. I find the Petitioner is not entitled to any relief as claimed by him. No Cosis.

Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January 2007)

K. JAYARAMAN, Presiding Officer

Witnesse Remained:

For the Petitioner

WW1 Sri J. L. Alexander WW2Sri V. S. Ekambaram

For the Respondent MW1 Sri C. Mariappan

MW2 Sri C. Ramalingam

Documents Marked :--

Ex. No. Date

Description

1-8-88 W]

Xerox copy of the paper publication in daily Thanthi based on Ex. M1.

		.,,	,		7, 1725
W2	20-4-88	Xerox copy of the administrative guidelines Issued by Respondent/Bank	W19	26-3-97	Xerox copy of the letter advising selection of part time Menial—G. Pandi
W 3	24-4-91	for implementation of Ex. M1. Xerox copy of the circular of Respondent/Bank to all Branches	W20	31-3-97	Xerox copy of the appointment order to Sri G. Pandi
	1.501	regarding absorption of daily wagers in Messenger vacancies.	W 21	Feb. 2006	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle
W 4	1-5-91	Xerox copy of the advertisement in the Hindn on daily wages based on Ex. W4.	W22	13-02-95	Xerox cupy of the Maduria Module
W5	20-08-91	Xerox copy of the advertisement in The kindu extending Period of qualifying			Circular letter about Engaging temporary employees from the panel of wait list
₩6	15-3-97	service to daily wagers. Xerox copy of the circular letter of Zonal Office, Chennai About filling up of	W23	09-11-92	Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff.
W 7	25-3-97	vacancies of messenger posts. Xerox copy of the circular of	W24	09-07-92	Xerox copy of the primates of the Biparrite meeting.
		Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.	W25	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for
₩ä	Nī	Xerox copy of the instruction in Reference book on staff about casuals			implementation of norms-creation of part- time general attendance.
		not to be sugaged at office/branches to do messengerial work.	W26	07-02-06	Xerux copy of the local Head Office circular about Conversion of part time
wg	10-12-84	Xerox copy of the service certificate issued by Mannadi Branch.			employees and redesignate them as general attendants.
W 10	5-8-88	Xerox copy of the service certificate issued by Mannadi branch.	W27	31-12-85	Xerox copy of the local Head Office circular about Appointment of temporary
WII	8-8-88	XETOX copy of the service certificate issued by Personbur branch.			employees in subordinate cadre For the Respondent/Management:
W12	Nii	Xerox copy of the statement showing number of Days the Petitioner worked.		o. Date	Description
W13	N	Xerox copy of the administrative	MI	17-11-87	Xerox copy of the settlement.
		goldelines in reference book on staff	M2	16-07-88	Xerox copy of the settlement.
		matters issued by Respondent/Bank regarding appointment of temporary	M3	27-10 -8 8	Xerox copy of the settlement.
		employees.	М		Xerox copy of the settlement.
W14	Nei	Xexux copy of the Reference book on	MS	30-07-96	Xerox copy of the settlement.
		Staff matters Vol. III consolidated upto 31-12-95	M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
W15	63-97	Xerex copy of the call letter from Madurai zonal office for interview of measurager	М7	28-05-91	Xerox copy of the order in W.P. No.7872/91.
W16	06-03-97	post—V. Muralikannan Xerox copy of the call letter from	М8	15-05-98	Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa.
		Madurai zonal office For interview of messenger post—K. Subburaj	M9 -₹	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
W17	06-03-97	Xernx copy of the call letter from Madurai zonal office For interview of messenger	M10		Xexox copy of the wait list of Chennai Module.
₩18	17-3-97	post —J. Velmarugan Xerox copy of the Service particulars— J. Velmarugan	М(I		Xerox copy of the under passed in CMP No. 16289 and 16290/99 in W.A. No. 1893/99.
		-			

नई दिल्ली, 19 जुलाई, 2007

का,आ, 2178,—औत्त्रोंगिक विवाद अधिवियम, 1947 (1947 का 14) की धारी 17 के अनुसरण में, कंन्द्रीय सरकार स्टेट बैंक ऑफ इंग्डिया के प्रनीपतंत्र के संबद्ध नियोजकों और उनके कर्मकारों जो बीच, अनुबंध में निर्दिष्ट औरक्रीयक विवाद में कंन्द्रीय सरकार औद्योगिक अधिकरण, चेत्रई के पंचाट (संदर्भ संख्या 248/2004) को प्रकाशित करती है, जो सोन्द्रीय सरकार को 19-7-2007 को प्राप्त हुआ था।

> [सं. एस-12012/447/98: आईआर(की 1) | अजय कुमार, ब्रेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2178.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 248/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 19-7-2007.

[No. L. 12012/447/98-18 (B-1)]

AJAY KUMAR, Desk Officer

ANNEXLIRE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAL

Wednesday, the 31st Javanary, 2007 PRESENT:

Nhi K. JAYARAMAN, Presiding Officer

Industrial Dispute No. 248/2004

(Principal Labour Court CGID No. 187/99)

(In the matter of the dispute for adjudiation under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial/Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sr. M. Dhanusuraj

: I Party/Peritic ocn

AND

The Assistant General Manager, : II Party/Management State Bank of India.

2. O. Chennai.

APPEARANCE:

For the Petitioner

: Sri V. S. Ekambaram,

Authorised Representative.

For the Management

 M/s, K, S, Sundar, Advacates.

AWARD

 The Central Government Ministry of Labour, vide Order No. I.-12032/447/98-fR (B-I) dated 12-3-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court. Chennai and the said Labour Court has taken the dispute on its file as CGID No. 187/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT cum labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as LD.No. 248 /2004.

The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Shri M. Dhanusuraj, wast list No. 461 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

The allegations of the Petitioner in the Claim Statement are briefly as follows.

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State. Bank of India and he was given appointment as messeager after an interview and medical examination. He was appointed on temporary basis at Tamharam heanth from 9-6-1984. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme. Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter. filed a copy of settlement under section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation. and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Tambaram branch. He was called for an interview by a Committee appointed by Respondent/ Bunk in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 9-6-84, the Petitioner has been working as a temporary messenger and a some times performing work in other branches also. While working on temporary basis in Tambaram branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in servace during the same period. While the Petitioner was working as such, the Manager of the branch informed the Potitioner really on [31,3,1997 that his services are not required any more and he need not attend the office from

1-4-1997. Hence, the Petitioner raised a dispute with regard. to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sastry Award. Even though the settlement. speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and funcies. The Respondent/Bank has also not observed the instructions. regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular coupleyment in Respondent/Bank with all attendent benefits.

 As against this, the Respondent in its Counter. Statement alleged that reference made by the Govi, for adjudication by this Tribumi itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of LD. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bons fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/ Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff

Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 7-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3). of I.D. Act. In terms thereof, the Petitioner was considered. for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 461 in wait list of Zonal Office, Chennai. So far 357 wait listed temporary candidates, out of 744 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it muse. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service. in may calendar year after 1-7-75 or minimum 70 days. aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies, in terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 461 he was not appointed. The stid settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements : and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/ Bank and this Tribunal has no jurisdiction to extertain such plear. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was

discharging the work of permanent messenger. As persettlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Osennai wait list of daily wagers was not finalized and hence but published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

- 5. In the additional claim statement, the Petaloner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is dury bound to regularise the services of the Pelitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner(be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.
- 6. Again, the Petitioner filed a rejoinder to the Country Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are country to the rights of the Petitioner. Hence, the Petitioner prays that an award may be piassed in his favour.
- In these circumstances, the points for my consideration are:
 - (i) "Whether the demand of the Petitioner in Wait List No. 461 for restoring the wait list of temporary messengers in the Respondent/ Bank and consequential appointment thereupon as temporary messenger is justified?"
 - (ii) "To what relief the Petitioner is entitled?"

Point No. 1:

- B In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) 1987, the Respondent/Bank hurtically entered into a seulement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. Ml. The Petitioner in this case and the Petitioners in the connected cases attacked this sculement as it is not binding on them the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have ruised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with took wages and other attendant benefits.
- On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Hank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case. the Peritioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank in the effect that temporary employees at branches/offices are not allowed to be in service. exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V A of the J.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. I carned representative for

the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the LD. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular/instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.Ml and the averpoons of MWI and MW2 and their testimenies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his famme with the settlements, Further, Clause 1 of Bx. M.I deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come-first go' or first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, famabes, cash coolies, water boys, sweepers ete "for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, Copy of which is marked as Ex.W8. Further, the appointment of thilly wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/ instructions. In such circumstances, the absorption of casuals along with the eligible canegories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the maner of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/ Bank has alleged to have prepared only one wait list for each module as per Bx M 10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.Mi, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called noninclusion except his baid statement. Further, according to MW1 wait list under Ex.M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Scattement while the 1988 scalement dealt with daily wager to Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Responden are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India. Further, the avernment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW I wait list under Ex M10 comparises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 & 15 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M. 10 namely wait list is not inconformity with the instructions of Ex.M2 and nonpreparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Forthermore, no wait list was released/ published even after the Court order in WMP No.11932/91 in W.P.No.7872/91 directing the Respondent/Bank to release the hist of successful candidates pursuant to the first advertisement published in The Hindo dated 1-8-88. Forthermore, with list under Ex.M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been propered in violation of instructions and ceased to have the credibility strached to the wait list. Above all, Ex. M. I was not produced at the time of conciliation proceedings held during the year 1997-98 held at Cheanai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Purther, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy

was used as a device to take them out of the principal clause 2 (nn) of the L.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that $\mathbf{E}\mathbf{x}$, \mathbf{M} (0) wait list has not been prepared in accordance with principle of seniority In the begal sense, since the selected candidates with tongest service should have priority over those who joined the service letter and therefore, the wait fist under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement. but in other violation and in breach, of it, Though clause 2(e) of Ex. M4 states that candidates found suitable for permanely appointment will be offered appointment against existing future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank The Respondent/Bank has not 'produced any document show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioned who was in regular service of the Respondent/ Bank is arbitrary, mala fide and illegal and the Respondent/ Bank has not acted in " accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central). lfyddrahud, ir is neither a 18(3) sestlement nor £2(3) schlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. MI to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Mudras in WMP No. 1 1932/91 in W.P.No. 7872/91 coased m have any relevance when the main writhas been disposed. of in the year 1999 and therefore, they do not have any bearing in the case of the Petirioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the sentements which are marked as Ex. M1 in M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and bence evidence

of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under section 25B and 25P of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benearts under the provisions of 1 D. Acr. It is further contentled on behalf of the Petitioner that though some of the Petitioners in the connected LDs have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and horize, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLI 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION V_{δ} . MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression factually worked under the employer' cannot nie an that those days only when the workmen worked with nammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been poid wages either under expression implied contract of service or by compulsion of statute. standing orders etc. It is farther, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and discrefore, their retrenchment is illegat. lo all these cases, the Peritioners were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 340 days and more in a continuous period of 12 calendar months and they are in ago group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribanal has to pass an award in their

But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Politioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Section 18(1) and 18(3) of the ID. Act, in hea of the provisions of law and implemented by the Respondent Bank and the claus of the Printioners are not hunafide and are made with alterior motive. Further, they have concealed the material facts that the Petitioner was want fixed as per length of his engagement and could not be absorbed as he

was positioned down in the seniority. The Respondent/ Bank was engaging temporary employees due to business: exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The semiement entered into by the Respondent/Rank and the federation were honaside which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the sendement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any uniter and the settlements were bank level settlements. and operate throughout the country. Further, he relied on the rollings reported in 1991 11 LU323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL, A.P., AND OTHERS wherein under section 12(3) the union entered into a settlement with the management settling the claim of 1: workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea be ore the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that his the absence of plea that the settlement reached in the course of conciliation is viriated by fraud, misrepresentation or coercion, the settlement is binding on the workmen. "I earned counsel for the Respondent further relied on the rulings reported in 1997 ITLLI 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Beach of the Bombay High Court has held that Therefore a settlement arrived at in the course of the conculiation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected. to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from seutiling the settlement." it further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories mantely (i) those arrived at outside the conciliation. proceedings under section 18(1) of the LD. Act and (ii) those arrived at in the course of conciliation proceedings. under section 18(3). A settlement of the first category has limited application and binds merely parties to it and semiented of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a

representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the, rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not benefide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitiolier. Further, he argued that no union of the bank has questioned the settlement. and in such discumstances, it cannot be said that it is not binding on them and he is estopped from disputing the

11. Learned counsel for the Respondent further comended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for responding the wait list of temporary messengers in the establishment of Respondent/Bank and consequential' appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Government is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alteged by the Petitioner in the Claim Statement.

But, as against this on behalf of the Petitioner it is: contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JULA HOTEL AND SHOP WORKERS LINION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the meterial before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of

the Petitionar to find out the exact ristore of dispute insread of refesting to answer the reference on merits." Further, he argued that the Tribunal has got power to go imo the question whether the Petitioner is to be reinstated in service. or not for which he relied on the rulings reported in 1998. LAB IC 1664 VAN SAG NATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Mathya Prasesh High Court has held that "the Tribunal **estatet go bésind the terms of reference, but that does not** mean that it cannot look into the pleadings of parties." He also relied do the rollings reported in 1998 LAB IC 1507. A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not **arrempt to equalder tise order under reference in a technical** manuar or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SIC 569 the Supreme Court has held that "the Tribunal had jurisdiction to consider all incidental matters. also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the rest nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference. is not happily framed nor was it framed to the highexpectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleaftings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged. by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in aervice and he relied on the rulings, reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS V. K.V.VIIEESH wherein the Supreme Coun has beld that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the besis of competitive examination acquires a right of appointment in Oovernment service in

an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made. in view of the impending absorption of steam surplus staff. and a policy decision has been taken to reduce the number. of vacancies and consequently, a certain number of hottom. persons were removed from the select list and the remaining. selectors were given appointments according to their comparative ments. In which, the Supreme Court has held that "m such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme. Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel. was not to confer on them any sight to seek permanent. appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panet expiring on 6-2-98, we are of the opinion. that the Respondents did not get any right because of inclusion of their names in the said panel for permanent. absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings. reported to 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible." right to appointment even if a vacancy exists? and relying on all these decisions, learned counsel for the Respondent. contended that since the Peritioner has no right to question. the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it connutbe said that preparation of wait list was made with malafide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should. be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacasecy. The direction in effect means that every ad-hoc / temporary employee who has been continued for one year. should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was heappointed in pursuance of a notification calling for applications which means he had entered by a back door. (c) he was not eligible and qualified for the post at the time. of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional

problems indicated by us in part 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be beld that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be monified in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugued directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SEC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Beach of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate. would arise, if the candidate concerned is appointed in an irregular manner or on ad-boc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born beby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." 'Therefore, learned counsel for the Respondent contended that these temporary employees were appointed. only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the milings reported in AIR 1997 SC 3657 HTMANSHU KUMAR VIDYARTHI & ORS Vs. STATE OF BIHAR AND ORS, wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under those circumstances, their disengagement from service cannot. be construed to be a retrenchment under the LD. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts. their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the

Rajasthan High Court has held that "Under Section 25G of the LD. Act retrenchment procedure following principle of 'last come - first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors". Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his jumors were made permanent by the Respondent/ Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such direamstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Peritinger and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY. STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that "merely because a temporary employee. or a casual wage worker is continued for a time beyond the tern of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely off. the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-bnc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open cyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to ake out his fivelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jethison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued cermanently. By doing so, it will be creating another mode. of public appointment which is not permissible." Further, the Supreme Court while laying down the law, bas clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee...... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if . the original appointment was not made by following a due process of selection as envisaged by relevant rules.** Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD AND OTHERS Vs. SOMVIR SINGH, wherein the Sugreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the

question of confirmation of an employee upon the explay of purported period of probation would not arise." Further. in CDJ 2006 SC 395 MUNICIPAL COUNCIL SUJANPUR Vs. SURINDER KLIMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a "State" within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any retruitment made in violation of such rules as also in violation of constitutional scheme enshriped under Article 14 and 16. of the Constitution of India would be void in law," Further, in 2006 21,J.\$\ 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that Toolly because an employee had worked for more than 240 days. of service by that itself, would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent derisions of this court probably having regard to the changes in the policy decisions of the Govt, in the wake of prevailing market economy, globalisation. privatisation and outsometing is evident, in view of the sembed legal position, as noticed hereinbefore "

Relyting on all these decisions, learned counsel. for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in gegular vacancy or sanctioned post, the Petitioner is not enritted to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing.so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allowed to them. Under such circum dances, it cannot be questioned by the Petitioner.

17 I find much force in the contention of the learned counsel the Respondent. Though in the Claim Statement, the Petitionershave made so many allegations with regard to preparation of wait list and also sentements entered into between the Respondent/Bank and Federation, at the time of reference, elley have not questioned the settlement nor the number allotted to each individual in the wait list Forther, the Pelitioners have not questioned the serriement and they have not alleged that settlement was not a bong ride in nature or it has been arrived at on account of mala. fule, misrepresentation, fraud or even comption or other indicements. Under such circumstances, I find the Petitioners carpot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary

employees to be absorbed, I find the Peritioners cannot claim for reinstatement or regularisation in services of the Respondent /Bank

(8) Further, the representative for the Peritioner contended that in a smallaneases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Peritioners are entitled for the same ratio.

19. But I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supremi Court has also held that each case must be considered on its over metic and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to be changes in the pathoy decisions of the Govt, in the wake of prevailing market economy, globalisation, privansation and autsourcing is exident. I find the Petitionar is not emitted to claim regularisation or reinstallment in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitionar

Point No. 2:

The next point to be decided in this case is to what relief the Preimoner is amin as ?

30. In view of my foregoing findings that the Petitioner is a temporary employee and the school entitled in be absorbed in regular service or made permanent merely on the strength of such continuously of work. I find the Petitioner is not entitled to any relief as claimed by him. No Cests.

Thus, the reference is answered accordingly.

(Diersaczlite the P.A., tenasoribed and typed by him, concered and pronounced by the in the open court on this day the 31st January (2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:

For the Petitioner WW: Sri M. Dhansuraj

WW/Sn V.S. Ekambaranji

For the Respondent MW1 Sri C Mariappan MW2 Sri C. Ramalingam

Documents Marked :-

Ex. No. Date Description

W1 91-08-88 Xerox copy of the paper publication in duty Thanth! based on Ex. M1.

W2 ZEG4-88 Xerox copy of the administrative guidelines issued by respondent/Bank for implementation of Ex. M1.

Will 24/04-9! Xerkix copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.

post-K. Subburaj.

W20 06-03-97 Xerox copy of the call letter from Madurai

post-J. Velmurugan.

W21 17-03-97 Xerox copy of the service particulars J.

Velmurugan.

zonal office For interview of messenger

्माग् ।	<u>।</u> खण्ड 3	(ii)] भारत का राजपत्र : अस	स्त 4, 200)7/ श्रा क्षणः <u>13</u>	1929 4949
W4	01-05-91	Xerox copy of the adventisement in the Hindu on daily Wages based on Fx, W4.	W22	25-03-97	Xerox copy of the letter advising selection of part time Menial -G. Pandi.
WS	20408-91	Xerox copy of the advertisement in The Hindu extending Period of qualifying	W 23	31-03-97	Xerox copy of the appointment order to Sri G. Pandi.
W6	15-03-97	Office, Cheunai About filling up of	₩24	Feb. 2005	Xerox copy of the pay stip of T. Sekar for the month of Pebruary, 2005 wait list No. 395 of Madurai Cerole.
W7	W7 25-02-97	Respondent/Bank to all Branches	₩25	13-02-95	Xerox copy of the Madurai Module Circular letter about Engaging temporary employees from the panel of wait list.
		regarding identification of messenger vacancies and filling them before 31-3 97.	W26	09-11-92	Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger shaff.
W8	Nil	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to	W27	09-07-92	Xerox copy of the minutes of the Bipartite meeting.
W 9	09-03-87	do messengerial work. Xeros copy of the service certificate issued by Tamboram Branch.	W28	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for
W10	Nil	Xerox copy of the service certificate issued by Tambaram branch.			implementation of porms-creation of part time general attendants.
wn	27-05-88	·	W29	07-02-06	Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as general attendants.
W12	20-08-92	Xerox copy of the service certificate issued by Tambaram APS branch.	W30	31-12-85	Xerox copy of the local Head Office
₩13	04-01-94	•			circular about Appointment of temporary employees to subordinate cadre.
W14	01-01-95	• • •	For the Respondent/Management:—		
W15	30-12- 96	issued by Meenambakkam Branch. Xerox copy of the service certificate	Ex No	. I late	Description
1* 1.5	3.712-90	issued by Meenambakkam Branch.	MI	17-11-87	Xerox copy of the settlement.
W16	NiL	Xerox copy of the administrative	M2	16-07-88	Xerox copy of the settlement.
		guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate	MB	27-10-88	Xerox copy of the settlement.
			M4	09-01-91	Xerox copy of the settlement.
		care and service conditions.	M5	30-07-96	Xerox copy of the settlement.
۲۱w	Ni	Xerox copy of the reference book on Staff matters. Vol. III consolidated upto 31-12-95.	M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
W18	06-03-97	Xerox copy of the call letter from Madurai	M 7	28-05-91	Xerox copy of the order in W.P. No.7872/91.
WIG	06-03-97	zonal office for interview of messenger post-V. Muralikannan. Xerox copy of the call letter from Madurai	M8	15-05-98	Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa.
מניה	00-00-71	zonal office For interview of messenger	М9	10407-99	Xerox copy of the order of Supreme Court

in SLP No. 3082/99.

M11 25-10-99 Xerox copy of the order passed in CMP

Module.

1893/99.

MIO NE

Xerox copy of the wait list of Chemai

No.16289 and 16290/99 in W.A. No.

٠.٠

नई दिल्ली, 19 जुलाई, 2007

का, अहं. 2179. - औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की शार 17 के अनुसरण में, केन्द्रीय सरकार स्टेट वेंक ऑफ इण्डिया के इंबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुषंघ में निर्देष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, शहं न्यायालय, चेंबई के पंचार (संदर्भ संख्वा 231/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-7-2007 को प्राप्त हुआ था।

> [सं एल-12012/434/98-आईआर(बो-1)] अजय कुमार, बेस्क अधिकारी

New Delhi, the 19th July, 2007.

S.O. 2179. In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 231/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 19-7-2007.

(No. L-120) 2/434/98-TR (B.())

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAL

Wednesday, the 31st January, 2007

PRESENT: K. JAYARAMAN, Presiding Officer

Industrial Dispute No. 231/2004 (Printipal Labour Court CGID No. 150/99)

(In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sti G. Murugan

: I Party/Petitioner

ANT

The Assistant General Manager,: Il Party/Management State Bank of India,

Z. O. Chennai

APPEARANCES

For the Pentipner

 Sri V. S. Ekambaram, Authorised Representative.

For the Management

 M/s. K. S. Sundar, Advocates

AWARD

 The Central Government Ministry of Labour, vide Order No. L-1 2012/434/98-TR (B-I) dated 10-2-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 150/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT Cum Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as L(), No. 231/2004.

The Schedule mentioned in that order is as follows:—

"Whether the demand of the workman Shri G. Murugan, wait list No. 557 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

 The allegations of the Petitioner in the Claim Statement are briefly as follows:—

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Pallavaram branch from 1-9-1983. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme. Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation. and the settlement is with regard to absorption of Class IV temperary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed formar through Branch Manager of the Pallavaram branch. He was called for an interview by a Committee appointed by Respondent/ Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Peritioner was informed orally to join at the branch where he initially worked as a class IV employee. From 1-9-1983, the Pelitioner has been working as a temporary messenger and some time performing work in other branches also While working an temporary basis in Service branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner really on 31-3-97 that his services are not

required any more and he need not attend the office from 1-4-97. Hence, the Petitioner mised a dispute with regard to his non-comployment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt, to reconsider the reference and the Petitioner requested the Respondent/ Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Peritioner only in temporary services after the sentement. The Peritioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitiones was not a party to the settlement mentioned by the Respondent/Bank before the conciliation of licer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Purther, the settlements are repugnant to Section 25G & 25H of the LD. Act. The termination of the Perisioner is agains) the provisions of Para 522(4) of Sastry Award, Even though the settlement speaks about three categories only a single want list has been prepared and the Respondent/ Bank has been regularising according to their whim and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/ Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt, for adjustication by this Tribonal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of LD. Act in Section of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bong fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/ Rank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and

when their case was expoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-07-88, 07-10-88, 9-1-91 and 30-7-96. The said settlements became subject moster of conciliation proceedings and minutes were drawn under Section \$8(3). of I.D. Act. Interms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 553 in wait list of Zonal Office, Chennai. So far 357 wait listed temporary candidates, out of 744 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrendument provisions referred to above. cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A. B. and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar. months and under eategory (C) the temporary employees. who have completed 30 days aggregate temporary service. in any calendar year after 1-7-75 or minimum 70 days. aggregate temporary service in any continuous block of 36. calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniotity in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Letirioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In resma of aforesaid settlements, out of 744 wait fixted candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 553 he was not appointed. The said sertiements were bone fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the sentlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, [53]. does not apply to Respondent/Bank and this Tribunal bas. no jurisdiction to entertain such pies. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not conject to say that the Petitioner was discharging the work of permanent messenger. As per sertlements, vacancies upto 31-12-94 were filled up against the wait list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of failly wayes/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has accolain for permanent absorption. Hence, for all these teasons, the Respondent prays to dismiss the claim with costs.

You the additional clasm statement, the Petitioner. contended that he was liaving been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteriuset out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV. poli. He was engaged in the messenger post in the sub refinale carire of the Respondent/Bank continuously with definerate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services. of the Petinster as he has acquired the valuable right ensavined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that quebet no giret, natances, was listed persons like the Peritioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment, Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberatety delayed in filling up the vacancies by the wait. Exical workmen with ulterior motive. The Respondent/Bank. has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancess. Hence, the Petitioner prays that an award may be passed in his favour.

- 6. Again, the Petitioner filed a rejoinder to the Country Statements of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India 5th/f Federation were under section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class 1V staff in the Respondent/Bank is in accordance with the instructions taid town under codified circulars of the Respondent/Bank. Twee in the Writ Petition before the High Court in W. 1, No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that in a settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.
- 7 In these pircumstances, the points for my consideration are:
 - (i) "Whether the demand of the Peritioner in Watt Lest No. 557 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified."

(ii) "To what relief the Petitioner is entitled?"

Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners. in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having seen selected and wait iisted in terms of the relevant gardefine school days of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary lassis. After engaging them intermittently for some years. the Petitioner in this case and other Peririoders in the connected disputes were terminated without any notice Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen. concerned and while the matter was pending in Wint Petition. No. 542 (Civil) 1937, the Respondent/Bank harriedly entered into a settlement on the issue of absorption, of temporary employees also filled it before the Supreme Court at the time of final hearing of the Wrst Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as 1/x, MI. The Peritioner in this case and the Petitioners in the connected cases attacked this semientern as it is not binding on them on the gonurd that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice demed an opportunity to work in the bank after 31.3 1997 and therefore, they have raised the dispute in: the year 1997 before the tables authorities and they questioned the remeachment as unjust and illegal and they further prayed for resociatement with back wages and other arrendam benefits.

On Schalf of the Petitioner, it is contended that: Piese Peritioners were retruited as lemporary employees in the Respondent/Bank under the guidelines and circulars. issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management, They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calandar months and was not in continuous. service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circular@guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner. working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V A of the LD. Act and a is preposterous to contend that the Peritioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Politioners who are refrenched messengers. and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V. A of the LD. Act providing for retrenchment is not enacted only for the honefit of the workmen to whom Section 25F applies tact for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Peritioner has no vulid and enforceable right for appointment is unrenable. It is further contended that on behalf of the Petitioner that \mathbb{R}^{n} W2. W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the sentements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MW1 and MW2 and their testimonics during the cross-examination will clearly show how the bank has gaven a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into $^{\circ}A$, B and C', but this categorization of $^{\circ}A$. B & C" is quite opposed to the doctrine of flast come. This go for 'tirst come--last go' and therefore, the categorization in Clause 1 is illegal. Clause 1(a) of Ex M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters. copy of which is marked as Fx.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial meanment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuats affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex.M 10. in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is anable to say as to when the wait list Ex.M30 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.Ml. M3 and M4 respectively. But, when MWI has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex.M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hen ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that "it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 seniement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the avenment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals, it is further contended on behalf of the Peririoner that as per deposition of MW1 wait list under Ex M40 comprises of both messengerial and nonmessengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M3 provides for the same norms to the caxuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 & 16 of Constitution of India. Therefore, the Perinoner contended that preparation of Ex.M I namely wait list is not inconformity with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait its! was released/ published even after the Court order in WMP No.11932/91 in W.P.No.7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1 R-88. Furthermore, wait list under Ex.M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive, at their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Mudurat and only during the year 2003 the Respondent/Bank procluded the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment. that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave



vagages was used as a device to take them out of the principal clause 2 (on) of the E.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESPRIVE BANK OF INDIA AND OTHERS wherein the Supreme: Coxes has held that "to employ workmen as "tsedlies" estuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex.M 10 wait first has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service letter and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bud in law. Thus, the Respondent/Bank lies not acted in accordance with the law and the spirit of the settlement, but in oner vibration and in breach of it. Though clause 2(e) of Ex. M4 states that caudidates found suitable for permanera appointment will be offered appointment against existing/future vacantly anywhere in module of circle and in case, a candidate fails to accept the offer of appointment or paying within the prescribed period, he will be deemed to have related it and the name shall stand deleted from the respective paniel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any decument to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Perinimen who was in regular service of the Respondent Bank is arbitrary.mala fide and illegal and the Respondent/ Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has precluded Ex. Mit which alleged to be a copy of mispues of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central). Hyderabad, it is neither a 18(3) settlement not 12(3). settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. MI to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Lx MF and MTF interim orders passed by High Court of Madrak in WMP No.11932/91 in W.P No.7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner, Further, though the Respondent/Management has examined two witnesses, the deposition of management watnesses during the crossexamination had become apparent that they have no personal knowledge about the senlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Back has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it egostitutes past reterence period and nonce evidence

of Respondent/Bank tras no application to the Petitioner's case. The Peritinners have completed the solvice of 240. cays and more in a continuous period of 12 calendar menths. as enshrined under sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 75. and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are enritled to the benefits auxier the provisions of LD. Act. It is further contended on behalf of the Pentioner that though some of the Petitioners. in the connected LTPs, have not completed 240 days, since the Respondent/Bank has not taken into consideration and ont included the Sundays and paid holidays as days on which the Petinoners have acrually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the julings reported in 1985 it LLL 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression factually worked under the employer" cannot mean that those days. unity when the worldmen worked with namines, sickle or pet. but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages wither under express or implied contract of service or by compulsion of statute. standing orders etc. It is further, argued that call fetters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but wese denied further engagement on account of serdements/sapsing of wait hyly and out of these Petitioners seme of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their

10. But, as against this, the learned senior counsel for the Respondens/Bank consended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the ease. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they load accepted the settlements drawn ender the provisions of Sections 18(3) and 18(3) of the LD. Act, in lieu of the provisions of raw and implemented by the Respondent/Ram and the claim of the Petitioners are not bonafide and are made with offerior mouve. Further, they have concealed the material facts that the Petitioner was wait instead as per

length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/ Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 [3.1.1 323 ASSOCIATED GLASS INDUSTRIES LTD: Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND UTIERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctify of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from souttling the settlement." la further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 J.L.J. 308 K.C.P. LTD. Vs. PRESIDING OF ICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the LD. Act and (ii) those errived at in the course of consiliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATYONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner, Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counset for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wair list Number given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstand in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Government is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION VS. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into

the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead. of relusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service. or not for which he relied on the rulings reported in 1998. LAB IC 1664 VAN SAG NATHAN ORIENT PAPER. MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal. cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rutings reported in 1998 LAB IC 1507. A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR. COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in ATR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters. also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Coun is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and (gasonable manner, though the order of reference is not happily framed not was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retreached from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alloged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

- 13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.
- 14. Then the learned counset for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings, reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V.VIJEESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears

in the select list on the basis of competitive examination. acquires a right of appointment in Government service in an existing or a future vacancy." In that case, pruning of select hat on reduction in number of vacancies was made. in view of the empending absorption of steam surplus staff. and a policy decision has been taken to reduce the number. of vacancies and consequently, a contain number of bottom. persons were removed from the select list and the remaining. selecteds were given appointments according to their comparative merits. In which, the Supreme Court has held. that "no such execumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further telled on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that thy six letter dated 7-2-87 the bank. informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent. appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of me opinion. that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Periting and the appeal respectively." He further relied on the rurings. reported in 1991 3 SCC 47 SILANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held. that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question. the wait list and since there is no male side on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mata fide. motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS, Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all these ad-hoc temporary. employees who have continued for more than a year should. he regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc/. temporary employee who has been continued for one year. should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Pinployment Exchange, not was he appointed in pursuance of a notification calling for applications which means he had entered by a back door. (c) he was not eligible and qualified for the post at the time

of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by as in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the merc continuation of an ad-hoc employee for one year, it cannot he presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees. who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held. that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courty. He further relied on the decision reported. in 1997 II SCC LASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bonch of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad boc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy. question of regularising the incumbent on such a nonexisting vacancy would never survive for consideration and even if such purported regularisation or confirmation. as given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them. valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent controded that these temporary employees were appointed only due to exigencies and they have not appointed against any regular. vacancy and they have only appointed in leave vacancies. and therefore, they are not entitled to claim any absorption. in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts,

their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the L.D. Act retrenchment procedure following principle of 'last come - first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his junious have been made permanent in banking service, he has not established with any evidence. that his juniors were made permanent by the Respondent Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. in such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and therefore, the claim is to be dismissed with costs.

Learned Senior Advocate further argued that even. in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that merely because a temporary employee. or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to cke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued. permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant. rules and after a proper competition among qualified persons, the same would not confer any right on the appointee...... It has to be clarified that merely because a temporary employee or a casual wage worker is continued. for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due: process of selection as envisaged by relevant rules. Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme

Cours has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question: of confirmation of an employee upon the expray of purported period of prohation would not arise." Further, in CDJ 2006. SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that "it." is not disputed that the appointment of the Respondent. was not in senctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was board to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Article 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION V.S.C. PANDEY wherein the Supreme Court has held that "only Secause an employee had worked for more than 340 days. of service by that itself, would not confer any legal right. apon frim to be regularised in service." The Supreme Court also held that "the changes brought about by the sur-equent decisions of this court probably having regard. to the changes in the policy decisions of the Government. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

Relying on all these decisions, learned counsel. for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entified to dispute the same and they are estopped from doing so Further, their prayer before the labour authorities. was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the sertiements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wast list or number allotted to them. Under such diroumstances, it cannot be questioned by the Petitioner.

17. I sind much force in the contention of the learned coursel for the Respondent. Though in the Claim Statement, the Petitioners have made so many altegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alloged that settlement was not a bone tide in nature or it has been arrived at on account of mala fide, misreptesentation, fraud or even corruption or other inducements. Under such circumstances, I find the

Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed. I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank

18. Further, the representative for the Petitional contended that in a similar case, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 42 calendar months and the Supreme Court has also held that each case must be considered on its own ment and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Covernment in the wake of prevailing market economy, globalisation, privatisation and outsnotting is evident. I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondents Bank as alleged by him. Therefore, I find this point against the Petitioper:

Point No. 2:

The next point to be decided in this case is to what rehef the Petitioner is entitled.³

- 20. In view of my foregoing findings that the Peritoder is a temporary employee and he is not emitted to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Peritioner is not entitled to any relief as claimed by him. No Costs
 - 21. Thus, the reference is answered accordingly.
- (Dictated to the P. N., transcribed and typed by him, corrected and presounced by line in the open court on this day the 51st January (2007).

K. JAYARAMAN, Presiding Officer

Witnesses Examined:

For the Politioner WW 1 So G. Muregan

WW2Sri V. S. Ekambarara

For the Respondent : MWI Sri C. Mariappan

MW2 Sti C. Ramalingam

Documents Marked:-

Ex. No	o. Date	Description
WI	1-8-88	Xerox copy of the paper publication in daily Thunthi based on $Ex. M1$.
W2	20488	Xerox copy of the administratifive guidelines issued by Respondent/Bank for implementation of Ex. M.

		<u>-</u> -			
W 3	24-4-91	Xerox copy of the circular of Respondent/Bank to all Branches	₩21	26-03-97	Xerox copy of the letter advising selection of part time Menial—G. Pandi
		regarding absorption of daily wagers in Messenger vacuacies.	W22	31-03-97	Xerox copy of the appointment order to Sci G. Pandi.
W4	01-05-91	Xerox copy of the advertisement in The Hindu on daily wages based on Ex.W4.	₩23	19eb. 2005	Xerox copy of the pay stip of T. Sekar for the month of February, 2005 wait list
W5	20-08-91	Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers.	W24	13-(02-95	No. 395 of Madurai Circle. Xerox copy of the Madurai Module Circular letter about Engaging temporary
W 6	15-03-97	Xeros copy of the circular letter of Zonal Office, Chennai about filling up of	w25	09-11-92	employees from the panel of wait list. Kerox copy of the Head Office circular
N°:	25-03-97	vacancies of messenger posts. Xerox copy of the circular of		(-	No. 28 regarding Norms for sanction of messenger staff.
		Respondent/Bank to all Branches regarding indentification of massenger vacancies and filling them before	W26	09-07-92	Xerox copy of the minutes of the Bipartite meeting.
ws	N-il	31-3-97. Xerox copy of the instruction in Reference Book on staff about casuals not to be engaged at office/branches to do massengerial work.	₩27	094(7)-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of part time general attendants.
W9	H-04-92	Xerox copy of the service certificate issued by Chamiers Branch.	W28	07-02-06	Xerox copy of the local Head Office circular about Conversion of part um
WIU	2-06-88	Xerox copy of the service certificate issued by Pallavaram branch.			employees and redesignate them a general attendants.
WII	27-08-88	Xerox copy of the service certificate issued by Pallavarain branch.	W29	31-12-85	Xerox copy of the local Head Offic circular about Appointment of temporary employees in subordinate
W 12	17-12-90	Xerox copy of the service certificate issued by Triplicate Branch.	T 41	- 13d	cadre.
W13	23 04-97	Xerox copy of the service certificate issued by service branch		e Respond A Date	ent/Management : Descrip!ion
₩] ‡	03-07-89	•	MI	17 11-87	Xerox copy of the settlement.
W 15	NE .	Xerox copy of the administrative	M2	16-07-88	Xerox copy of the settlement.
		guidelines in reference book on staff	M3	27-10 -8 8	Xerox copy of the settlement.
		matters issued by Respondent/Bank regarding recruitment to subordinate	M4	09-01-91	Xerox copy of the settlement.
		care & service conditions.	M5	30-07-96	Xerox copy of the settlement.
W16	Ni	Xerox copy of the Reference Book on . Staff matters Vol. III consolidated upto	М6	09-06-95	Xerox copy of the minutes of concitiation proceedings.
W 7	06-03-97		M7	28-05-91	Xerox copy of the order in W.3 No.7872/91.
		zonal office for interview of messenger post—V. Muralikannan.	M8	15 05-98	Xerox copy of the order in O. i No. 2787/97 of High Court of Orissa.
W.FB	06-03-97	Xerox copy of the call letter from Mathrai zonal office for interview of messenger post—K. Subburaj.	М9	10-07-99	Xerox copy of the order of Suprema Cir. in SLP No. 3082/99.
W 19	064)3-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger	Mio	Nil	Xerox copy of the wait list of Chean Module.
W20	17-03-97	post—3. Vehrurugan. Xerox copy of the service particulars— J. Vehrurugan.	MII	25-10-99	Nerox copy of the order passed in CM No.16289 and 16290/99 in W.: No.1893/99.

नई दिल्ली, 19 **जुला**ई, 2007

का.आ. 2180,— औद्योगिक विवाद अधिनयम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रथक्षतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिश्व औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/अम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 247/2004) को प्रकाशित करती है, बौ केन्द्रीय सरकार को 19-7-2007 को प्रणत बुआ था।

> (सं. एल-12012/489/98-आईआर(बी. I) J अजय कुमार, डेस्क अभिकारी

New Delhi, the 19th July, 2007

S.O. 2180.—In persuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 247/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the tribunitial Pispute between the management of State Bank of In the and their workmen, received by the Central Governe ent on 19-7-2007.

[No.L-12012/489/98-IR (B. It)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFOR: THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM-LABOUR COURT, CHENNAI

> Wee needay, the 31st January, 2007 PRESENT

K. J. YARAMAN, Presiding Officer Industrial Dispute No. 247/2004 (Princips, Labour Court CGID No. 174/99)

(in the matter of the dispute for adjudication under clause (ii) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Denotes Act, 1947 (14 of 1947), herween the Management of East of India and their workmen]

BETWEEN

Sri P. Manickum

: IParty/Petitioner

AND

The Assistant Co. 101 Manager. : II Party/Management State Bank of In 11.

Z.O. Chennai.

APPEARANCE

For the Petitioner

Sri V. S. Ekambaram.
 Authorised Representative

For the Management

: M/s. K Veeramani,

Advocates

AWARD

 The Central Government Ministry of Labour, vide Order No. L-12012/489/98-JR (B-1) dated 12-2-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chemasi and the said Labour Court has taken the dispute on its file as CGID No. 174/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Count, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as LD. No. 247/2004.

The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Shri P. Manickam, wait list No. 446 for restoring the wait list of temperary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

 The allegations of the Pericioner in the Claim Statement are briefly as follows:

The Peritioner was sponsored by Employment Exchange for the post of sub-staff in Class IV cadre in State Bank of hidia and he was given appointment as mosteriger. after an interview and medical examination. He was appointed on temporary basis at Triplicane branch from 22-05-1980. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Wrig Perition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/ Bank, in addition to its counter, filed a copy of sentenent. under section 18(1) reached between management of State Bank of India and Ali India State Bank of India Staff Federation and the settlement is with regard to absorption. of Class IV temporary workmen who were desired employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workings under three catagories namely A. B and C. Though the classification was unreasonable, the Respondent/Bank brought to the porice of the Peritings. about the interview to be held through advertisensemb The Petitioner also submitted his application in the prescribed format through Branch Manager of the Triplicane. branch. He was called for an interview by a Committee. appointed by Respondent/Bank in this regard. But, they have not informed the copult of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV conployee I from 22-05-1980, the Peritioner has been working as a temporary messenger and some times. performing week in other teauches also. While working on temporary basis in Ningambakkam branch, another advertisement by the Respondent/Bank was made regarding casual workers who were ireported to be inservice during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31/3 97 that his services are not required any more and he need not arrend the office from 1-4-97. Hence, the Patitioner raised a dispote with regard to

his non-employment. Since the conciliation ended in failure: the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh propresentation to Govt. to reconsider the reference and the Petitioner requested the Respondent/ Bank to continue to engage him in service as obtained prior to [3] [3.97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Peninoner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him efter interview do not merit consideration. The Petitioner was not a party to the verdement mentioned by the Respondent/Bank before the conciliation officer. Therefore; the Respondent's action ... in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 250 & 25H of the LD. Act. The termination of the Petitlober is against the provisions of Para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wan list has been prepared and the Respondent/ Bank has been regularising according to their whims and fancles. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing ... him to work under assumed name or by both which amounts' : to unfair labour practice. The wait list suffers serious infirmities and it is not based on surict seniority and without any rationale. Hence, for all these reasons the Petitioner, prays to grant relief of regular employment in Respondent/ Bank with all attendant benefits.

 As against this, the Respondent in its Counter: Statement alleged that reference made by the Govt, for adjudication by this Tribunal itself is not maintamable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner'is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of LD. Act in lieu of provisions of . law, retrenchment and implemented by Respondent/Bank 🕟 The claim of the Petitioner is not bounfide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and. could not be absorbed as be was positioned down in seniority. Due to the business exigency, the Respondent!. Bank angaged the temporary employees for performance ... of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are chaiming permanent absorption and. when their case was espoused by State Bank of India Staff. Fedgration which resulted in five settlements dated 17-11-87, 16-07-88, 07-10-88, 9-1-91, and 30-7-96. The said

settlements became subject matter of conciliation. proceedings and minutes were drawn under Section 18(3). of 1.D. Act. In terms thereof, the Politioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was west listed as candidate No. 446 in wait list of Zonat Office, Chemiai. So far 357 wait listed temperary candidates, out of 744 whit listed temporary employees. were permanently appointed by Respondent/Bank. It is . false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in Icave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements. drawn as per retrenchment provisions referred to above. cannot turn around and claim appointment. Soub of those temporary employees who were appointed were engined : . for more number of days and hence, they were appointed: Under the settlement, employees were dategorised as A. B. and C. Cimildering their tempionary service and subject to other eligibility criteria, under category (A) the imporary -employees who were engaged frir 240 days were to be considered and under entegory (B) the temperary employees who have completed 270 days aggregate. temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary stavics :in any calendar year after t-7-75 or minimum 70 days. aggregate (eitifornity service in any continuous block of 36. calendar months were to be considered. As per clause 🗓 💠 the length of lengthrary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date watextended apto 31-3-1997 for filling up valuacies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not for regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 446 he was not appointed. The said settlements were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements. of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981. does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such piece. It is not correct to say that documents and identity of Potitioner was verified before the Petitioner was expaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto-31-12-94 were filled up against the wait list of temporary.

employees and vacancies for 1995-96 has to be titled up against the wait list drawn for appointment of daily wages/ casual labour. Further, for circle of Chennai wait list of daily wages/was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

- In the additional claim statement, the Petitioner. contended that he was having been sponsored by employment exchange and having undergone medical examination, the Peritioner has fulfitled the criteria set our by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subarriinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right eashrined by the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with alterior motive. The Respondent/Bank has been arbstrarily filling up the vacancies with the persons other than wait listed workmen according to their whiths and fancies. Hence, the Petitioner prays that an award may be passed in his favour.
- 6. Again, the l'editioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, retruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Peutson before the High Court in W.P.No.7872 of 1991, the Petisioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petisioner. Hence, the Petitioner prays that an award may be passed in his favour.
- In these discumstances, the points for my consideration are:
 - (i) "Whether the domand of the Petitioner in Wail List No. 446 for restoring the wait list of temporary messengers. In the Respondent/ Bank and consequential appointment thereupon as temporary messenger is justified?"
 - (ii) "To what relief the Petitioner is entitled?"

Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners. in the connected industrial disputes have been sponsored. by Employment Exchange and they having been called for interview and having been selected and wait listed in terms. of the relevant guidelinesAproplars of the Respondent/Bank. in permanent vacancies. In subordinate cade on temporary basis. After engaging them intermittently for some years. the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees. Union had filed a Writ Perition before the Supreme Court to proteet the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition. No. 542 (Civil) 1987, the Respondent/Bank bouriedly. entered into a settlement on the issue of absorbtion of camporary employees and filed it before the Supreme Court. at the time of final bearing of the Writ Petition. This sentement has become an exhibit of the Respondent/Back and has been marked as Ex. Mt. The Petitioner in this case and the Petitioners in the confidered cases attacked this settlement as it as not binding out them on the ground that may have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice depied an apportunity to work in the bank after. 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retranchment as unjust and illegal and they further prayed for rejustatement with back wages and other. attendant benefits.

 On behalf of the Petitioner, it is contentled that these Petitioners were recruited as temporary employees. in the Respondent/Bank, under the guidelines and circulars. issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the remporary employees and any settlement in this regard is redundant and in any case. the Petitioner is not bound by settlement under Section. (801) entered into between the alleged Federation and the Respondent/Management They further contended that though the Respondent/Bank has stated that the Petitioner. has not worked for more than 240 days in a continuous. period of 12 calendar months and was not in continuous. service on 17-41-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service. exceeding 200 days, neace the question of Petitioser. working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V.A.of. the LD. Act and it is preposterous to contend that the Petitioner has no valid and entorceable right for appuintment as Section 25G and 25H are very much applicable to the Peshioners who are retrenulted messengers. and are eligible to be reinstated. Learned representative for

the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the LD. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies by for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and en inceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to sime in connection with the implementation of the set tements on absorption and which are statutory in character, Further, a combined study of Ex M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his fature with the settlements, Further, Clause 1 of Ex. MI ueals with categorization of retrenched temporary employees into "A. B and C", but this categorization of "A. B & CT is quite opposed to the doctrine of flast coope. Since ge i or first come— last go and therefore, the cutegorization in Clause I is illegal. Clause I(a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and altowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etchion absorption along with the other eligible caregories. of temporary employees is not valid. Further, engaging cesnals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters. copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are sericity prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual bases should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex.M 10 in this case. Those candidates under Ex.M ii) were found suitable for appointment as messengers and sweepers. Even MW I is unable to say as in when the wait list Ex.M10 way prepared, but it is mentioned in Ex.M10 that it was propared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.Ml. M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court noter is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait fist under Ex.M 10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hop'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Hipertite Settlement while the 1988 settlement deatt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circomstances, as rightly contended the Respondent are not justified and combined the list of caudidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the. Petitioner that as per deposition of MW1 wait list under Ex.M10 comprises of both messengerial and nonmessengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M3 provides. for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 & 16 of Constitution of India Therefore, the Petitioner contended that preparation of Ex.M 10 namely wait list is not inconformity with the inspections of Ex.M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding temjected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/ published even after the Court order in WMP No.11932/91 in W.P.Ne.7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8 88. Furthermore, wait list under Ex.M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M: was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Peditioner that though the Respondent/Bank has alleged that these petitioners were engaged in feave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement. un absorption of temporary employees, the expression that they were engaged in feave vacancy was used as a device

so take them out of the principal clause 2 (66) of the L.D. Act. 1947. Though the Peritioner's work in the Respondent/ Bank is continuous and though the Pethioner has performed the duties continuously which is still in existence, the categorisation as soch is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4. SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that The employ weakmen as 'badlies' casuals or temporaries. and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex.M 10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the sefected candidates with longest service should have priority over those who joined the service letter and therefore, the wait list under Lix. M H) which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement. but in ufter violation and in breach of it. Though chaise 2(e) of Ex. M4/states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and an case, a candidate fails to accept the offer of appointment. or postbig within the prescribed period, he will be deemed. to have refused it and the name shall stand deleted from the respective pline and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document. show how he has arrived at the seniority and till date, it is a mystery as the who that senior was and there is no documentary evidence in support of the airerment and also for the averiment of MW I. Therefore, the termination of the Peritioner who was in regular service of the Respondent/ Bank is arbitrary, matu fide and illegal and the Respondent/ Bank has not kered in accordance with the terms of settlement on abborption of temporary employees. Though she Respondent/Itank has produced (ix, M6 which alleged to be a copy of minutes of conciliation proceedings dated. 9-6-75 before Regional Labour Commissioner (Central). Hyderabad, it is neither a 18(3) settlement nor 12(3) scattement as eldinged by the Respondent/Bank which says only with regard to modification of Ex. MI to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Peditioner: Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross examination hid become apparent that they have no personal knowledge about the settlements which are marked as 10x. M1 to M5. Above all, though the Respondent/Bank. has referred to voluntary retirement scheme, in the Respondent/Barlk it was implemented only in the year 2001. and it constitutes post reference period and hence evidence

of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240. days and more in a continuous period of 12 calendar months. as enshritted under section 25H and 25H of the Industrial. Disputes Act, therefore, their remembers from service is illegal and against the mandatory principions of Section 25. and therefore, they are deensed to be in continuous service. of the Respondent/Bank and they are entirled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Peritioner that though some of the Peritioners. in the connected LDs have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid ballidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 caferdar. months. He also relied on the rulings reported in 1985 41. LLI 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein: the Supreme Court has held that the expression factually worked under the employer, cannot mean that those days only when the working it worked with handless, settle or penbut must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been sould wages either under express in implied contract of service or by collepulsion of statute. standing orders etc. It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank this conducted the internew and selected the temporary employees who have reported to have submitted their application for absorption as per the bank is circular and therefore, their retrenchment is ittegal. In all these cases, the Petitioners were in employment as substaff in early 1980s her were denied further engagement. on account of settlements/lapsing of wait fists and out of these Petitioners some of them have completed 240 daysand more in a committees period of 12 calendar months. and they are in age group of 40 to 50 years and for no fault. of theirs, they find themselves straigled in life matstrago. They have also not gainfully employed. Iti such direumstances, this Tribinal basit/paps an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not rhuintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular approximate/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Section 18(1) and 18(2) of the ID. Act, in line of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners ateract bonafule and are made with olterior motive. Further, they have conscaled the material facts that the Petitioners why warf listed as per-

length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacaning. The settlement entered into by the Respondent/Bank and the federation were bounfide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is astropped from questioning the settlement directly or indirectly and his claim is liable to be rejected. For the amore, the said sentements were not questioned by any union and the settlements were bank level settlements annioperate throughout the country. Further, he relied on the ratings reported in 1991 ILL1323 ASSOCIATED GLASS INDUSTRIES LTD, Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3), the union entered into a settlement with the management settling the claim of 11 workings and the workings resigned from the job and received terminal banefus, but the workmen raised a plea before the Tribunal that they did not resign voluntarily, But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is valiated by fraud. misrepresentation or coercion, the settlement is bioding on the workmen." Learned counsel for the Respondent lurther relied on the rulings reported in 1997-ILLL [189] ASHOK AND OTHERS VS. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proposedings with a recognised majority union will be harding on all workmen of the establishment, even those who belong to the mipority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to applied the sanctity of settlements reached within the active assistance of the conciliation officer and to discourage as individual employed or a minority union from scholing the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of . Such adlegations, a seulement in the goorse of collective bargaining is catified to due weight and consideration." Learned counsel for the Responders further relied on the tulings reported in 1997 J. LUI 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories earnely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the LD. Act and (ii) those arrived at in the course of emocification proceedings under Section 18(3). A settlement of the first cetegory has simited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be hinding on all, workman of the establishment. Even in case of the

first category, if the settlement was reached with a representative union of which the contesting workmen were morphers and if there was nothing intreasonable or unfair en the terms of the scatternant, it genst be bricking on the cornesting workmen also," He further relied on the sulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD, Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that . "scalement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not being fide in nature or that it has been arrived at on account of fraud, missepresentation or rongestment of facts or even compution and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Gove may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement resulted with the help of the concelliation officer must be fair and reasonable," Relying on all these decisions, learned counsel for the Respondent contended that though it is \odot alleged that they are set parties to the settlement, since the federation in which the Patitioner is also one among them. they have entered into settlement with the bank and therefore, it is binding on the Politioner, Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on there and he is estapped from disputing the · same. · , , ;

11. Learned counsel for the Respondent further convended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Pertitioner contended that the retreatchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt, is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Pethioner it is contended that more wording of reference is not decisive in the matter of tenability of a reference matter reliad on the rullings reported in 1998 LAB IC 345 SECRETARY, KOLLAM III LAHOTTA AND SHIP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM Wherein the Kerala High Court has held that "more wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the magnital before it, it has only an duty and that is to decide the points on merits and not to find our same technical defects in the wording of reference, subjecting the poor workman to bardship involved in meving the machinery again." It further held that "the Tribunal should look into

the pleading and find out the exact nature of pleading of the Petitionar to find out the exact nature of dispute instead. of refusing an answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service. or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAGNATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He aiso relied on the rolings reported in 1998 LAB IC 1507. A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "It has been repeatedly held that the Labour Court should not attempt to opinsider the order under reference in a rechnical. manner or a nedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR. 1993 SC 569 the Supreme Coun has held that "the Tribunal. has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which, would prolong the industrial adjudication. The Labour Court is expected to decide the real patting of disputes between the parties and with that object in view. ir should opnsider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retreached from the Respondent/ Bank and therefore, this Tribunal can look into the pleadings. of the Petitioners and can decide whether the Petitioner is: entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

- 13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Pederation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.
- 14. Then the tearned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wais list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be ministred in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V.VHEESH wherein the Supreme Court has held that "the only question which falls for determination to this appeal is whether a candidate whose name appears

in the select list on the basis of competitive examination acquires a right of appointment in Govt, service in an existing or a future vacancy. In that case, pruning of setect list on seduction in number of vacancies was made in view of the impending absorption of steam surplus staff. and a policy decision has been taken to reduce the number. of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such gircumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS Vs. SHANKAR PAUL AND OTHERS wherein the Supreme. Court has held that "by its letter dated 7 2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the uppeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held. that "candidates included in merit list has no indefeasible." right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitionet has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait 2st was made with male fide. motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS, Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now. coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should. be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc/ temporary employee who has been continued for one year. should be regularised even though (a) no vacancy is available for him which means creation of a vacancy: (b) he was not sponsored by Employment Exchange, nor was beappointed in pursuance of a notification calling for applications which means he had entered by a back done. (c) he was not eligible and qualified for the post at the time.

of his appointment (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in parts 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Purther, there can be no rule of fromb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow prespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set axide the orders of lower Courts. He further relied on the "decision reported in 1997 ITSEC 1 ASHWAN! KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Pull Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against as available vacancy which is already sanctioned. But, if the initial cutry itself is unguthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a nonexisting vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these . temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank, Purther, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the LD. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts,

their disengagement is not arbitrary." He further relied on the rulings reported in 1994-3 L.J.J (Supp.) 754 wherein the Rajasthan High Court has held that "Under Section 250 of the LD. Act retrenchment procedure following principle of 'hast come—first go' is not raundatory but early directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and remining juniors. Though in this case, the Peritioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/ Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with custs.

Learned Senior Advocate further argued that even. in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-lioc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that " it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to burgain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got campleyed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer may right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued. for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a ducprocess of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 NATIONAL PERTILIZERS LTD, AND OTHERS Vs. SOMVIR SINGH, wherein the

Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SUR[INDER KUMAR, the Supreme Court has held that "it is not disconed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Article 14 and 16 of the Constitution of India would be void in law." Further. in 2006 \$ LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that 'only because an employee had worked for more than 240 days of service by that itself, would not confer any legal right epose him to be regularised in service. " The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Govt, in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the sertled (egal position, as noticed hereinbefore."

16, Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioned is not entitled to claim regularisation of his service Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Pederation and since they have not questioned the wait tist prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by scuttements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such cirdumstances, it cannot be questioned by the Petitioner;

17. I find much force in the contention of the learned counsel the Respondent. Though in the Claim Statement, the Petitidners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Furface, the Petitioners have not questioned the settlement and they have not alloged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, missepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the

Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed. I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent /Bank.

18. Further, the representative for the Petitioner contended that it a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in trature and hence, the Petitioners are entitled for the same relief.

19 But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Goyt, in the wake of prevailing market economy, global/sation, privatisation and outsourcing is evident. I find the Petitioner is not entitled to claim regularisation or reiostatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2:

The next point to be decided in this case is to what tellef the Peritioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any rehef as claimed by him. No Costs.

Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and promonced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:

For the Petitioner WW1 Sri P Manickam

WW2 Sri V.S. Ekambaram

For the Respondent MW Sri C. Mariappan

MW2.Sri C. Ramalingam

Documents Murked:-

Ex. No. Date Description

W1 I-08-88 Xerox copy of the paper publication in daily Thanthi based on Ex. M1.

W2 20-04-88 Xerox copy of the administratifive guidelines issued by Respondent/Bank

for implementation of Ex. M1.

		· · · · · · · · · · · · · · · · · ·				
W3	2 4-4-9 1	Xerox copy of the circular of Respondent/Bank to all Branches	W20	17-03-97	Xerox copy of the service particulars— I. Velmurugan	
		regarding absorption of daily wagers in Measurager vacuacies.	W2 1	26-03-97	Xerox copy of the letter advising selection of part time Menial—G. Pandi	
W 4	01-05-91	Xerox capy of the advertisement in The Hindu on daily Wages based on Ex. W4.	W22	31-03-97	Xerox copy of the appointment order to Sri G. Pandi	
W.S	20-08-91	Xerox copy of the advertisement in The Hindu excepting Period of qualifying service to daily wagers.	W23	Peb. 2005	Xeron copy of pay the slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle	
W6	15-03-97	Xerox copy of the circular letter of Zonal Office. Chemnal About filling up to vacancies of messenger pouts.	W24	13-02-95	Xerox copy of the Madurai Module Circular letter about Linguigning temporary employees from the panel of wait list	
W 7	25 -03-97	Xeros copy of the circular of Respondent/Bank to all Branches regarding indentification of massenger vacancies and filling them before	W25	09-11-92	Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff	
ws	Nī.	31-3-97.	W26	09-07-92	Xerox copy of the minutes of the Bipartite meeting	
	NE	Xerox copy of the instruction in Roserence book on suff about casuals not to be engaged at office/branches to do massengerial work.	W27	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of	
W9	21-06-83	Xerox copy of the service certificate issued by Triplicate Branch.	77.000		part time general attendants	
W10		Xerox copy of the service certificate issued by Nuagambakham branch.	₩28	07-02-05	Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as	
Will	184)2-92	Xerox copy of the service certificate issued by Chimadripot branch.	W29	31-12-85	general attendants Xerox copy of the Jocal Head Office	
W12	10-03-98	Xerox copy of the service certificate issued by Town Branch.			circular about Appointment of temporary employees in subordinate cadre	
W33	25-01-06	for service Service being Issued to Deputy General Manager, State Bank of	For the Respondent/Miningument:			
			Ex. No. Date		Description	
WIS	Nik	foolia, chennai, Xerea copy of the acknowledgement card	M 1	17-11-87	Xexox copy of the settlement.	
		and Postal receipt.	M2	16-07-88	V	
W15	Nii	•			Xerox copy of the settlement.	
		Xerox copy of the administrative	. M3		Acrox copy of the settlement. Xerox copy of the settlement.	
		Xerox copy of the administrative guidelines in reference book on staff	M3 M4			
		guidelines in reference book on staff matters issued by Respondent/Rank	٠.	27- 0 -8 8	Xerox copy of the settlement.	
		guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate care & service conditions.	M4	27-10-88 09-01-91	Xerox copy of the settlement. Xerox copy of the settlement.	
W16	иi	guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate	M4 M5	27-10-88 09-01-91 30-07-96	Xerox copy of the settlement. Xerox copy of the settlement. Xerox copy of the settlement. Xerox copy of the minutes of generalisation	
		guidelines in reference book on staff matters issued by Raspondent/Rank regarding recruitment to subordinate care it service conditions. Xerex copy of the Reference book on Staff matters Vol. III consolidated upto 31-12-95. Xerex copy of the call letter from Machinal zonal office for interview of messenger.	M4 M5 M6	27-10-88 09-01-91 30-07-96 09-06-95 28-05-91	Xerox copy of the settlement. Xerox copy of the settlement. Xerox copy of the settlement. Xerox copy of the minutes of appealisation proceedings. Xerox copy of the order in W.P. No. 7872/91. Xerox copy of the order in O. P. No. 2787/97 of High Court of Opissa.	
W15	и <u>і</u>	guidelines in reference book on staff matters issued by Raspondent/Rank regarding recruitment to subordinate care it service conditions. Xerox copy of the Reference book on Staff matters Vol. III consolidated upto 31-13-95. Xerox copy of the call letter from Markoni zonal office for interview of messenger post—V. Muralikannan	M4 M5 M6 M7	27-10-88 09-01-91 30-07-96 09-06-95 28-05-91	Xerox copy of the settlement. Xerox copy of the settlement. Xerox copy of the settlement. Xerox copy of the minutes of appealisation proceedings. Xerox copy of the order in W.P. No. 7872/91. Xerox copy of the order in O. P. No. 2787/97 of High Court of Drissa. Xerox copy of the order of Supreme Court	
Wl6	и <u>і</u>	guidelines in reference book on staff matters issued by Raspondent/Bank regarding recruitment to subordinate care it service conditions. Xerox copy of the Reference book on Staff matters Vol. III consolidated upto 31-13-95. Xerox copy of the call letter from Markoni zonal office for interview of messenger post—V. Muralikannan	M4 M5 M6 M7 M8	27-10-88 09-01-91 30-07-96 09-06-95 28-05-91 15-05-98 10-07-99	Xerox copy of the settlement. Xerox copy of the settlement. Xerox copy of the settlement. Xerox copy of the minutes of appealisation proceedings. Xerox copy of the order in W.P. No. 7872/91. Xerox copy of the order in O. P. No. 2787/97 of High Court of Opissa.	

नई दिल्ली, 19 जुलाई, 2007।

कर.आ. 2181.—औद्योगिक विवाद अधिनिवम, 1947 (1947) का १४) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंग्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक क्षित्राद में केन्द्रीय सरकार औद्योगिक अधिकरण/त्रमान्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 237/2004)। को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-7-2007 को प्राप्त हुआ। वा ।

> [सं. एल-12012/440/98-काई.कार.(धी-I)] अवद कुमार, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.C. 2181.—In pursuance of Section 17 of the industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 237). 2004) of the Central Government Industrial Tribunal cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India auf their workmen, received by the Central. Governmention 19-7-2007.

> [No.L-12012/440/98-IR (B-I)] AJAY KUMAR, Desk Officer ANNEXIBLE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TREBUNAL-CUM-LABOUR COURT, CHENNAI

> Wednesday, the 31st January, 2007 PRESENT

K.: JAYARAMAN, Predding Officer Industrial Dispute No. 237/2004 (Principal Labour Court CGID No. 164/99)

(In the matter of the dispute for adjuditation under clause(d). of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Maanagement of State Bank of India and their workmen)

BELWEEN

Sri K. Raju

: [Party/Petitioner

AND

The Assistant General Manager, : II Party/Management State Bank of India,

Z.O. Chemui.

APPEARANCE

For the Petitioner

Sri V. S. Ekambaram,

Authorised Representative.

For the Maragement

: M/s, K, Veeramani, Advocates.

AWARD

1. The Central Government, Ministry of Labour vide Order No. L (12012/440/98-IR (H-I) dated 12-02-1999 has referred this dispute earlier to the Tamil Nadu Principal. Labour Court, Chennai and the said Labour Court has taken

the dispute on its file as CGID No. 164/99 and issued notices. to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGTF-cum Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribonal has numbered it as I.D.No. 237/2004

The Schedule mentioned in that order is as: follows:

> "Whether the demand of the workman Shri K. Raju, wait list No. 659 for restoring the wait. list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

The allegations of the Petitioner in the Claim. Statement are briefly as follows:--

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State. Bank of India and he was given appointment as messenger. after an interview and medical examination. He was appointed on temporary basis at Perambur branch. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Wria Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under section 18(1). reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary. workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held. through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Perambur branch, He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. The Petitioner has been working as a temporary messenger and some times performing work in other branches also. While working on temporary basis in Thousandlighs branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be inservice during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required. any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure. the matter was referred to this Tribunal for adjudication.

Though reference was sent to this Tribunal, the reference. framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govil to reconsider the reference and the Patitioner requested the Respondent/ Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due. course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action m not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G &. 25H of the LD. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sastry Award, Even. though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/ Bank has been regularising according to their whims and families. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/ Bank with all attendant benefits.

 As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal intelf is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of LD. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/ Bank engaged the temporary employees for performance. of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-07-88, 07-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under section 18(3).

of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 659 in wait list of Zonal Office, Chennai. So far 357 wait listed temporary. candidates, out of 744 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A. B. and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary corplayees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar. months and under category (C) the temporary employees. who have completed 30 days aggregate temporary service: in any calendar year after 1-7-75 or minimum 70 days. aggregate temporary service in any continuous block of 36. calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 (or filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary. employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary. employees were appointed and since the Petitioner was wait listed at 659 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped. from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said seulements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamit Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981. does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified. before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto-31-12-94 were filled up against the weited list of temporary. employees and vacancies for 1995-96 has to be filled upagainst the wait list drawn for appointment of daily wages/

casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Retpondent prays to dismiss the claim with costs.

- 5 In the additional claim statement, the Petitioner. contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria secont by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV. post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberard and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right coshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect than under no circumstances, wait fisted persons like the Peritioner be engaged even in menial category, thus, the Respondent/Bank imposed total han for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons. other than wait fisted workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.
- 6. Again, the Petitioner filed a rejoinder to the Conner Statement of the Respondent, wherein it is stated that all the senlements made by the bank with the State Bank of India Staff f'edequoun were under section 18(1) of the Act and not under section 18(3) of the Act. As per recruitment odes of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in IV.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. [Hence, the Petitioner prays that an award may be passed in his favour.
- 7. In these circumstances, the points for my consideration are:
 - (i) "Whether the demand of the Petitioner in Wais List No. 659 for restoring the wait list of temporary messengers in the Respondent/ Bank and consequential appointment thereupon as remporary messenger is justified?
 - (ii) "To what relief the Petitioner is entitled?"

Point No. 1:-

B. In this base, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners

in the connected industrial disputes have been sponsored. by Employment Exchange and they having been called for interview and having been selected and wait listed interms. of the relevant guidelines/circulars of the Respondent/Bank. in permanent vacancies in subordinate cadre on temporary basis. After engaging them interminently for some years. the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary. employees in the year 1985, the State Bank Employees. Union had filed a Writ Petition before the Supreme Court. to protect the legal and constitutional rights of the workmen. concerned and while the matter was pending in Weir Petition. No. 542 (civil) 1987, the Respondent/Bank humledly. entered into a serilement on the issue of absorption of τουηχητή employees and filed it before the Supreme Court. at the time of final hearing of the Writ Petirion. This settlement has become an exhibit of the Respondent/Bank. and has been marked as Ex. M 1. The Petitioner in this case. and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vocancy and Respondent/Bank without any intimation of notice denied an apperturity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the Ishour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for rehasolement with back wages and other. attendant benefits.

9. On behalf of the Patitioner, it is contended that these Petitioners were recruited as temporary employees. in the Respondent/Bank under the gordelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case. the Petitioner is not bound by sentement under section. 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner. has not worked for noire than 240 days in a continuous. period of 12 calendar mostles and was not in continuous service on 17-11 1987, therefore, they have no valid and enforceable right for appointment, in the wake of smotinstructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service. exceeding 200 days, hence the question of Petitioner. working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter VA of the I.D. Act and it is proposterous to comend that the Petitioner. has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 J.AB & IC 2248 CONTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has beld that Chapter V-A of the

I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retreached workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retreached temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come— last go' and therefore, the categorization in Clause 1 is illegal. Clause 1(a) of Ex.M1 provides an opportunity to persons who were engaged on casual busis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per hank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given. permanent appointment in the bank service. Those casuals were given more hereficial treatment in the matter of arriving at qualifying service for interview and selection. But, temperary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/ Bank has alleged to have prepared only one wait list for each module as per Ex.M 10 in this case. Those candidates. under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW I is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.Ml, M3 and M4 respectively. But, when MW [has spoken about the settlements, he deposed that scalement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called noninclusion except his bald statement. Further, according to MW1 wait list under Ex.M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in

its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with deily, wager in Class IV category who were puid wages. daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987. settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on hehalf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 comparises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absurption. Therefore, it is violative of Article 14 & 16 of Constitution of India. Therefore, the Peritioner contended that preparation of Ex.M 10 namely wait list is not inconformity with the instructions of Ex.M2 and nonpreparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as perinstructions in Ex. W2 circular regarding projected vacabaties for the period from 1987 to 1994. Furthermore, no wait list was released/ published even after' the Court order in WMP No.11932/91 in W.P.No.7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex.M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list, Above all, Fx. MI was not produced at the time of conciliation proceedings bold during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list $E_{\rm X}$. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (oo) of the LD. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though

the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rollings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESFR V.G. BANK OF INDIA AND OTHERS wherein the Supreme. Court has field that "to employ workmen as "hadlies casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges; of permanent workmen is illegal." Learned representative further contended that Ex.M 10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest. service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also had in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of $E_{\rm K}$, M4. states that candidates found suitable for permanent appointment will be offered appointment against existing/ future vacquey anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have. refused in and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document show how he has arrived at the seniority and till date, it is: a mystery as to who that senior was and there is no documentary evidence in support of the avernion, and also for the averment of MW t. Therefore, the termination of the Petitioner who was in regular service of the Respondent/ Bank is arbitrary, mala fule and illegal and the Respondent/ Bank has not acted in accordance with the terms of settlemention also option of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3). sculementas claimed by the Respondent/Bank which says. only with regard to modification of Ex. MI to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No.11932/91 in W.P.No.7872/91 ccased to have any relevance when the main with has been disposed. of in the year 1999 and therefore, they do not have any bearing muthe case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no peasonal knowledge about the settlements which are marked as Ex. M140 M5. Above all, though the Respondent/Rank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and bence evidence. of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months

as enshrined under Section 25B and 25F of the Industrial. Disputes Act, therefore, their retrenchment from service is: illegal and against the mandatory provisions of Section 25. and therefore, they are deemed to be in continuous service. of the Respondent/Bank and they are entitled to the benefits. under the provisions of LD. Act. It is further contended on behalf of the Petitioner that though some of the Pecitioners. in the connected LDs have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Peritioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rollings reported in 1985 ${
m II}$ LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. Management of american express INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression factually. worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or penbut must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as: sub staff in early 1980s but were denied further engagement. on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days. and more in a continuous period of 12 calendar months. and they are in age group of 40 to 50 years and for no fault. of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their

But, as against this, the learned senior counsel. for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Section 18(1) and 18(3) of the ID. Act, in lieu of the provisions of law and implemented by the Respondent/ Bank and the claim of the Peritioners are not bonafide and are made with ulterior motive. Further, they have concealed. the material facts that the Petitioner was wait listed as perlength of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent Bank was engaging temporary corployees due to business

exagency for the performance of duties as messenger. Further, the aflegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the Federation were bonufide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estapped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements. and operate throughout the country. Further, he relied on the rulings reported in 1991 LU 323 ASSOCIATED GLASS INDUSTRUS LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen reixed a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached an the course of conciliation is viriated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent Unther relied on the rulings reported in 1997 Π LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPURT CORPORATION AND OTHERS wherein the Division Bench of the Rombay High Court has held that "therefore a settlement arrived at in the course of the concitation proceedings with a recognised majority union III be binding on all workmen of the establishment, even those who belong to the minority union which had objected 30 the same. To that extent, it departs from the ordinary law. of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." I repried counsel for the Respondent further relied on the ralings reported in 1997 I LLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that itsettlements are divided into two categories namely (i) those arrived at outside the conciliation. proceedings under Section 18(1) of the LD. Act and (ii) those arrived at in the course of conciliation proceedings. under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be hinding. up all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair.

in the terms of the seulement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD, Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has beld that "settlement is arrived at by the free will of the parties and is. a pointer to the being good will between them. When there is a dispute that the settlement is not bonafide in nature or that it has been arrived at on account of fraud. misrepresentation or concealment of facts or even corruption and other includements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations. as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have colored into settlement with the bank and therefore, it is binding on the Peritioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the

1]. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt, is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

But as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive. in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY. KOLLAM JILLA HOTEL AND SHOP WORKERS UNION V₅, INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has beld that "mere warding of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference; subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Peritioner to find out the exact nature of dispute instead. of refusing to answer the reference on merits." Further, he

argued that the Tribanal has got power to go into the question, whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998. LABIC M64 VAN SAG NATHAN ORIENT PAPÉR MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya-Pradesh High Court has held that "the Triburai cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507. A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been reseatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SQ 569 the Supreme Court has held that "the Trabunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view. it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it trained to the high expectation of the Labour Court." Relying on all these decisions, the regresentative for the Petitioner argued that though in the references: It is not mentioned that whether the retreachtness: is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/ Bank and therefore, this Tribunal can look into the plearings. of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the relings, reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VIJEESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt, service in an existing or a future vacancy." In that case, princing of

select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of valancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative ments for which, the Supreme Court has held that "in such direumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS Vs. SHANKAR PALT, AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption. in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Pedition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Peritioner has no right to question the wait list and since there is no male fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the dare namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot gray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS, Vs. PIARA SINGH AND OTHERS wherein the Supremo Court has held that "now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc/ temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange, not was he appointed in pursuance of a notification calling for applications which means be had entered by a buck door (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by as in para 32 which would arise from

giving of such blanket orders. None of the decisions relied. upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of humb-in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision. reported in 1997 If SEC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts, "So far as the question of confirmation." of these employees whose entry itself was illegal and void. is concerned, it is to be noted that question of confirmation. or regularisation of an irregularly appointed candidate. would arise, if the candidate concerned is appointed in an irregular manner er en ad-hoc basis agninst an available. vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularizing the incumbent. on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them. or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." 'Therefore, learned counsel for the Respondent contended that these temporary employees were appointed. only due to exigencies and they have not appointed against. any regular vacancy and they have only appointed in leave. vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYAKTHI & ORS Vs. STATE OF BIHAR AND ORS, wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the LD. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the ratings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 250 of

the I.D. Accretrenchment procedure following principle of 'last come - first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors. Though in this case, the Petitioner has alleged that his juniors have been made permanent in hanking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

Learned Senior Advocate further argued that even. in recent decision reported in 2006 4 SCC 1 SECRETARY. STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that merely because a temporary employee. or a casual wage worker is confirmed for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent murely 6.4. the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of adhoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that " it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain— not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpentate illegablies and to take the view that a person who has temporarily or casually got employed should be directed to be continued. permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that ""unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee...... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuous c. if the original appointment was not made by following a due. process of selection as envisaged by relevant rules. "Tigether, or CDJ 2006 SC 443 NATIONAL FERFILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a mulity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Finther, in CDJ 2006. SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER; KUMAR, the Supreme Court has held that "it is is not disputed that the appointment of the Respondent was not in panctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its emplayees was bound to follow the recruitment rules. Any recruitment made in violation of such rules us also in violation of constitutional scheme enclarined under Articles 14 and 16. of the Constitution of India would be void in law." Further, ia 2006 2 LLN 89 MADHYA PRADESH STATE AGRO-INDUSTRIUS DÉMELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has hold that fonly. because an employee had worked for more than 740 days. of service by that itself, would not confer any legal right. upon him to be regularised in service. " The Supreme Court also held that "Ithe changes brought about by the subsequent decisions of this court probably having regard. to the changes in the policy decisions of the Govt, in the wake of prevailing market economy, globalisation, provensation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel. or the Respondent contended that since the Petitioner. has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Peritioner is not entitled to claim regularisation of his service. Forther, when they have not been questioned the fivesettlements entered into between the Respondent/Bank and Ferleration and since they have not questioned the wair list prepared by the Respondent/Bank, shey are not entailed to dispute the same and they are estopped from during so. Further, their prayer before the labour authorities. was only to restore the wait list and also for appointment. thereon as temporary messenger as per wait list. Undersuch circumstances, after expiry of the period mentioned. in the settle beauty which were subsequently amended by seitlements, the Petitioners cannot now question either. rise preparation of wait list or number allowed to them. Under such direumstances, it cannot be questioned by the

17. I tied much force in the contention of the learned. counsel for the Respondent. Though in the Claim. Statement, the Petitioners have made so many allegations. with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation. at the time of reference, they have not questioned the semiement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bone fifte in nature or it has been arrived at on account. of mala fide imisrepresentation, fraud or even corruption or ether inducements. Under such circumstances, I find the Pathingers cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the

Respondent/Bank has got sanctioned posts for temporary. employees to be absorbed. I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent /Bank.

 Perther, the representative for the Petitioner. contended that in a similar cases, this I rebunal had ordered for reinstalement with back wages and these disputes are siso similar in nature and hence, the Peritioners are entitled.

But, I find since the Supreme Court has held that. temporary employees are not intiried to claim any rights for regularisation, merely because they have completed 240. cases of continuous service in a period of 12 calendor months. and the Supreme Court has also held that each case must be considered on its own morit and the changes brought. about by the subsequent decisions of the Supreme Court. probably having regard to the changes in the policy. decisions of the Gost in the wake of prevailing market. contomy, globalisation, privatisation and outsourcing is: emacht. I find the Petitioner is not entitled to chain. regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner:

Point No. 2

The next prime to be decided in titls case is to with: resign the Petitioner's enucled?

- In view of any foregoing furnings that the Perittoner is a temperary employed and he is not emitted to: he absorbed in regular service or made permanent merely. on the strength of such continuance of work. I find the Permioner is not enritled to any relief as claimed by him. No
 - Thus, the reference is answered accordingly.

(Dietaied to the P.A., transcribed and typed by him, consected and promonced by the in the open court on this. day the 31st January, 2007.

K. JAYARAMAN, Presiding Office:

Witnesses Examined:

For the Petitioner

WWI Str K, Raju-

WW28r V, S. Ekambarani.

Put the Respondent

MWT Srt C. Mattappan. MW2 Sri C. Ramalingam.

Documents Marked:—

Ev. No. Dute:

Description:

WI. 1408-88

Xerox copy of the paper publication in daily Thanthi based on Ex. Mil.

W2 20-(M-88) Xerox copy of the administratitve guidelines issued by Respondent/Bank for implementation of Ex. M1.

W3 21 491 Xerox copy of the circular of Respondent/Back to all Branches regarding absorption of daily wagers in

Messenger vacancies.

'	<u> </u>				
W4	01-05-91	Xerox copy of the advertisement in The Hindu on daily Wagers based on Ex. W4.	W23	26-03-97	Xerox copy of letter advising selection of part time Menial—G. Pandi
WS	20-08-91	Xerox copy of the advertisement in The Hindu extending period of qualifying	W 24	31-03-97	Xerox copy of the appointment order to Sri G. Pandi
W 6	15-03-97	service to daily wagers Xerox copy of the circular letter of Zonat Office, Chennai About filling up to vacancies of messenger posts.	W25	1945, 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle
W7	25-03-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding indentification of massenger	W26	13-02-95	Xerox copy of the Madurai Module Circular letter about Engaging temporary employees from the panel of want list
		vacancies and filling them before 31-3-97.	W27	09-11-92	Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff
W8	MI	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do massengerial work.	W28	09-07-92	Xerox copy of the minutes of the Bipartite meeting
W9	30-11-84	Xerox copy of the service certificate issued by Perambur Branch.	W29	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for
Will	ND T	Xerox copy of the service certificate issued by Etephant Gate Branch.			implementation of norms—creation of part time general attendents
WIT	02-12-95	Xerox copy of the service certificate issued by Thousand Lights Branch.	W30	07-02-06	Xerox copy of the local Head Office circular about Conversion of part time
W 10	(9-01-96	Xerox copy of the service certificate issued by Washermenpet Branch.			employees and redesignate them as general attendants
W13	13-03-96	issued by Elephant Gate Branch.	W31	31-12-85	Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate
W14	13-03-96	Xerox copy of the service certificate issued by Elephant Gate Branch.			cadre
Wis	28-05-97	Xerox copy of the service certificate issued by Thousandlights Branch.		ic Kesponck o. Date	cat/Management :— Description
W16	21-06-97	Xerox copy of the service certificate	MJ		Xemx copy of the settlement.
12417		issued by Mint Terminus Branch.	M2		Xerox copy of the settlement.
WIT	Nil	Xerox copy of the administrative guidelines in Reference book on staff	мз	27-10-88	Xerox copy of the settlement.
		matters issued by Respondent/Bank regarding recruitment to subordinate	M4	09-01-91	Xerox copy of the settlement.
		care & service conditions.	MS	30-07-96	Xerox copy of the seitlement.
W18	Nīl	Xerox copy of the Reference book on Staff matters Vol. III consulidated upto 31-12-95	M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
W:9	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger	M 7	28-05-91	Xerox copy of the order in W.P. No.7872/91
11/20	os mana	post—V. Muralikannan	8M	15-05-98	Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa.
W20	06-03-97	Xerox copy of the call letter from Madusai zonal office for interview of messenger postK. Subbarraj	МУ	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
W21	06-03-97	Xerox copy of the call letter from Madurai zonal office For interview of messenger post— I. Velmurugan	M10	NE	Xerox copy of the wait list of Chennai Module.
W22	17-03-97	Xerox copy of the service particulars—	MII	25-10-99	Xizzox copy of the order passed in CMP No.16289 and 16290/99 in W.A.

भई दिल्ली, 19 जुलाई, 2007।

का.आ. 2182.—औद्योगिक विवाद अधिनियम, 1947 (1947) का (4) की धारा 🏗 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योक्ति विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चेत्रई के एंचाट (संदर्भ संख्या: 239/2004) को प्रकाशित करती है, जो केन्द्रोय सरकार को 19-7-2007 को प्राप्त हुआ था।

> [सं. एत 12012/468/98-आई.आर.(बी-1)| अजय कुमार, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2182.—in pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 239/ 7004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 19-7-2007.

[No.1712012/468/98 SR (B I)].

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT. CHENNAL

Wednesday, the 31st January, 2007 PRESENT

K. JAYARAMAN, Presiding Officer Industrial Dispute No. 239/2004 (Principal Labour Court CGID No. 166/99)

(In the matter of the dispute for adjudication under clause(d). of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act. 1947 (14 of 1947), between the Management of State Bank of India and their workmen).

BETWEEN

Sri P. Thomas

: I Parry/Petitioner

AND

The Assistant General Manager, State Bank of India,

. II Party/ . Management

APPEARANCE

For the Petitioner

Z. G. Chennai.

: Sri V. S. Ekambaram,

Authorised Representative

For the Management

: M/s. Veeramani, Advocates

AWARD

 The Central Government Ministry of Labour, vide. Order No. L. (20) 2/468/98-1R (B-1) dated 12-02-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 166/99 and issued notices. to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT Cum Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as L.D. No.

The Schedule mentioned in that order is as follows:

> "Whether the demand of the workman Shri P.Thomas, wait list No. 407 for restoring the wait. list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workings is entitled?"

The allegations of the Peritioner in the Claim. Statement are briefly as follows :-

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State. Bank of India and he was given appointment as messenger. after an interview and medical examination. He was appointed on temporary basis at Mannady branch from 16-6-1980. The Peritioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Perition No. 542/87 which was taken up by the Supreme Court. The Respondent/ Bank, in addition to its counter, filed a copy of settlement under section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption. of Class IV temporary workmen who were denied employment after 1985-36 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A. B and C. Though the classification was unreasonable, the Respondent/Bank brought to the sotice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Mannadi branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 16-6-80, the Petitioner has been working as a temporary messenger and some times performing work in other branches also. While working ontemporary basis in Chindadripet branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be inservice during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not required any more and he need not attend the office from 1-4-1997. Hence, the Petitioner raised a dispute with regard. to his non employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for

adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularise him in service. in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of noconsequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him. after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular. service is unjust and illegal. Further, the settlements are repugnant to Sections 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temperary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either. by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour. practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

 As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim. Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of LD. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts. that he was wait listed as per his length of engagement and could not be absorbed as be was positioned down in seniority. Due to the business exigency, the Respondent/ Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-7-1988, 7-10-1988, 9-1-1991 and 30-7-96. The said settlements became subject matter of conciliation

proceedings and minutes were drawn under Section 18(3). of 1.D. Act. In terms thereof, the Petitioner was considered. for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 407 in waitlist of Zonal Office, Chennai, So far 357 wait listed temporary. candidates, out of 744 waitlisted temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as perretrenchment provisions referred to above, cannot turn. around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate. temporary service in any continuous block of 36 calendar. months and under category (C) the temporary employees. Who have completed 30 days aggregate temporary service: in any calendar year after 1-7-75 or minimum 70 days. aggregate temporary service in any continuous block of 36. calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait fist and it was also agreed that wait list. was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid. and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peguliar problem was due to the facts that all the aforesaid temporary. employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 407 he was not appointed. The said settlements were bonafide which were the only workable solution and is hinding on the Petitioner. The Pelitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu-Industrial Establishment (Conferment of Permanent Status. to Workmen) Act, 1981 does not apply to Respondent/ Bank and this Tribunal has no jurisdiction to entertain such ples. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged, It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As persettlements, vacancies upto 31-12-94 were filled up against. the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for

appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and bence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to diamiss the claim with costs.

- In the additional claim statement, the Petitioner. contended that he was having been sponsored by employment exchange and having undergone medical examination, the Peritioner has fulfilled the criteria serout by the Reapondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously. with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services. of the Petitioner as he has acquired the valuable right. enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner he engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait. listed workfren with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons. other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.
- 6. Again, the Peritioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the sortlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the;Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Perition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned:the semicinent dated 27-10-88 and 9-1-91. It is false to allege that the settlements are commany to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.
- 7. In these circumstances, the points for my consideration are:
 - (i) "Whether the demand of the Petitioner in Wait List No. 407 for restoring the wait list of temporary messengers in the Respondent/ Bank and consequential appointment thereupon as temporary messenger is justified?"
 - (ii) "To what relief the Petitioner is entitled?"

Point No. 1:

In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored. by Employment Exchange and they having been called for interview and having been selected and wait listed in terms. of the relevant guidelines/circulars of the Respondent/Bank. in permanent vacancies in subordinate cadre on temporary. basis. After engaging them intermittently for some years, the Peritioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary. employees in the year 1985, the State Bank Employees. Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen. concerned and while the matter was pending in Writ Petinon. No. 542 (civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of pheorprion, of remperary. employees and filed it before the Supreme Court at the time. of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement. as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy. and Respondent/Bank without any intimation or natice. denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other. arrendant benefits

On behalf of the Peritioner, it is contended that those Petitioners were recruited as temporary employees. in the Respondent/Bank under the guidelines and circulars. issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section. 19(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous. service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict. instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees. at branches/offices are not allowed to be in service. exceeding 200 days, hence the question of Petitioner. working for 240 days does not arise at all. Further, they bave invoked the relevant provisions of Chapter V A of the LD. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retrenched messengers. and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248. CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supremy Court has held that Chapter V-A of the LD. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Segtion 25F applies

but for all cases of reprenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retreached workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular/instructions of the Residedent/Bank issued from time to time in connection with the implementation of the sculements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MW1 and MW2 and their testimonics during the cross-examination will clearly show how the bank has given a raw deal to the Peritioner from the beginning linking his future with the sendements, Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A. B & C' is quite opposed to the doctrine of flast come—first go" or first come — last go" and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex.M1 provides aff opportunity to persons who were engaged on casual basis and alliowed to work in leave/casual vacancies of messengers, farashes, each coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex.M10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW I is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17:11 87, 27:10:88 and 9-1-9.1 which are marked as Ex.MI, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 weit list under Ex.M10 was prepared on 2.5.92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that "it is clear that the 1987 settlement was concerned with the remporary class IV employees who were paid scate wages

as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987. settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate amempy to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per defreshion of MW1 wait first under Ex.M10 comparises. of both messengerial and non-messengerial candidates. While the temporary émployees were appointed after due process of selection and were paid wages on the basis of industry-wise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 & 16 of Constitution of India. Therefore, the Ectitioner contended that preparation of Ex.M10 namely want list is not inconformity with the instructions of Es.M2 and nonpreparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per Instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was teleased/ published even after the Court. order in WMP No.11932/91 in W.P.No.7872/91 directing. the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex.MIO does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective semority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions and ceased to have the credibility uttached to the wait list. Above all, Ex. M 1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chemmi and Madural and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Purther, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal ciause 2 (00) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Rank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petisioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH

Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'madlies' rassals or temporaries and to continue them as care for many years with the object of depriving them of the status and provileges of permanent, workmen is illagai " Lasrued representative further contended than Ex.M. (0) wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected condidates with imagest service should have princity goes. those who joined the service later and therefore, the wair list under Ex. M 10 which has been drawn op is contrary to law and also bad in law. Thus, the Respondenc/Bank has not acted thraccordance with the law and the spirit of the settlement, for in otter violation and in bresch of it. Though chause 2(e) of Ex. M4 states that candidates found sugable for permanent appointment will be offered appointment against existing/future vacancy anywhere in modute or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be decided to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that semon was und there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, malafills and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ext. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional. Unbour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor (2(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. MI to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11. interim orders passed by High Court of Madras in WMP No.11932/91 in W.P.No.7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/ Management has examined two witnesses, the deposition of managerdent witnesses during the cross examination. had become apparent that they have no personal knowledge, about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retizement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/ Bank has no application to the Peritioner's once. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as ensurined under section 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illingal and against the mandatory provisions of Section 25. and therefore, they are deemed to be in continuous service. of the Respondent/Bank and they are entitled to the

benefits under the provisions of 1D. Act. It is further co: f. aded on behalf of the Petitioner that though some of the Pentioners in the connected LDs have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days or which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II I LU 539 WORKMEN OF AMERICAN (WFRESS INTERNATIONAL BANKING CORPORATION) Vs. Management of american express INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that The expression factually. worked under the employer' connot mean that those days. only when the weakmen worked with hammer, sickle or peabut must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages eather under expression. implied contract of service or by compulsion of statute, standing orders etc." has further, argued that call letters produced by the Periodnet will clearly prove that the Respondent/Bank has conducted the interview and selected the termorary comployees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were desired further engagement. on account of settlements/lapsing of wair tists and out of these Petitioners some of them have completed 240 days. and more in a continuous period of 12 calendar months. and they are in age group of $40~\mathrm{m}$ 50 years and for no fault. of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such orcumstances, this Trinopal has to pass an award in their čavous.

iii But, as against this, the learned senior counsel. for the Respondent/Bank contanded that the reference made by the Governmen itself is not maintainable in view of the facis and circumstances of the case. The Pesityoner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption dejes not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had scoepted the settlements diawn duder the provisions of Section (8(!) and 18(?) of the ID. Act, in lieu of the provisions of law and in:plemented by the Respondent/ Bank and the claim of the Peririoners are not bonafide and are made with alreades motive. Faither, they have concealed the material facts that the Petitioner was wait fixted as perlongth of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/ Bank was engaging temporary employees due to business. exigency for the performance of duties as messenger. Further, the allegation that he was spousored by Proployment Exchange is incorrect and the allegation than he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement corrected into by the Respondent/Bank and the federation were honafide which were the only workable solution and

is building on the Petitioner. The Petitioner acceptes on settlement and accordingly he was wait listed and therefore. the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Purphermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 | LL J 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarity. But the Andem Pradesh High Coun has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned coursel for the Respondent further relied on the rulings reported in 1997 ILLLI 1189 ASHOK. AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held. that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be frinding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent of departs from the ordinary law of contracts, the object obviously is to uphoid the sanctity of seulements reached with the active assistance of the conditiation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "There may be exceptional cases, where there may be allegations of male fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 ILLI 308 K.C.P. LTD, Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has hold that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under section 18(1) of the LD. Act and (ii)those arrived at in the course of conciliation proceedings under section 18(3). A settlement of the first category has limited application and binds merely parties to it and xmilement of the second casegory made with a recognised majority union has extended application as it will be hinding on all workmen of the establishment, Even in case of the first category, if the settlement was reached. with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be biriding on the consenting workmen also." He further relied on the radings reported in AIR 2000 SC 469. NATIONAL ENCONDERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "sentement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the

settlement is not bona fide in vature or that it has boso arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet attriber. industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement research with the help of the conciliation afficer must be far- and : reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them. they have entered into settlement with the hank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the SOUTHCE.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is "whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified? The Peritimer contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Government is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive. in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBLINAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on ments and not to find out some technical defects in the wording of reference, subjecting the poor workman to bardship involved in moving the machinery again." It further held that "the Tribunal should. look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the tulings. reported in 1998 LAB IC 1664 VAN SAG NATHAN ORIENT PAPER MILLS VA. INDUSTRIAL TRIBUNAL & ORS, wherein the Madhya Pradesh High Court has being that "the Tribunal cannot go behind the terms of reference." but that does not mean that it cannot look into the

pleading nof parties." He also relied on the rulines reported ia 1998 LABIC 1507 A. SAMBANTHAN VI, PRESIDING OFFICER, LABOUR COURT, MADRAS, whereing has teen held-that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pediantic manner, but should consider the order of inference in a fair and reasonable manner." He also argued that in Express. Newspeptrs P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction." to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, i^{μ} , i^{μ} and Aconsider the order of reference in a fair and re-sonable manner, though the order of reference is not happily gramed. nor was it framed to the high expectation of the Labour. Chart "Relying on all these decisions, the representative for the Pelitioner argued that though in the reference, it is not mentioned that whether the retreminment is valid or not, from the pleadings it is clear that the Petitioners have. reen retrepelied from the Respondent/Bank and therefore, this Tribupal can look, into the pleadings of the Petitioners. and can decide whether the Petitioner is entitled to be reinstated, in service as alleged by him and whether he is: cutilled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

- 13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribitation is entitled to go into the question whether the strict proyed for by the Petitioner can be given to him or not ? But I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank. I list the Teritioner is not entitled to question the settlement.
- 14. Then the learned counsel for the Responden: contended(that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been that susted; now the Petitioner cannot question that he should be dranstated in service and he relied on the milings. reported # 1996 3 SOC 139 UNION OF INDIA AND O'078288 [3] K. V. VLIEFSH wherein the Supreme Court has hold that "the only question which falls for determination." in this appeal is whother a candidate whose name appears the select list on the busis of competitive examination. acquires a right of appointment in Government service. in an existing or a future vacancy." In that case, pruning, of select her on reduction in number of vacancies was made. in view of the impending absorption of steam surplus staff. and a policy decision has been taken to reduce the number nd vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative metris. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the

persons removed from the select list is not arbitrary and discriminators." He further relied on the rulings reparted. in 1997 o SCC 584 SYNDICATE BANK & ORS. Va SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter doted 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their numes in the panel was not in confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared. and the fact that it was a yearly panel expiring on 6-2-98. we are of the opinion that the Respondents did not get any right because of inclusion of their names in the road panel for permanent absorption in the services of the bank. Whatever conditional right mey had come to an end with the expiry of the panel. The clubm of the Respondents as: contained in the W.P. was thus, miscinceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Position and the appeal respectively." Him other relied on the rulings reported in 1991 3 SEC 49. SHAN KARSAN DASH Vs. UNION OF INDIA wherein the **Supreme** Coart has held that "candidates included in over it. list has na indefeasible right to appointment even if a No rome, restain " and relying on all these decisions, learned. counsel for the Respondent contended that since me-Peritioner has no right to question the wait list and straig there is no male fide on the part of the Respondent/Bank. in preparing the wait list, it cannot be said that preparation of wait list was made with reals fide motive. Under such circumstances, offer the expiry of the date namely 31-3-1997, the Pulliable Translation of the literature of the literature. with itst and be cannot pray for reinstatement as alleged by him. Further, he relied on the fullags reported in 19921 AR IC 2168 STATE OF HARYANA AND ORS. Vs. PIAKA SINGH AND OTFIFRS wherein the Supreme Court has held that I now coming to the direction that all those gahor semporary employees what have continued for more. than a year should be regularised, we find to difficult to sustain it. The direction has been given without reference. to the existence of a vacancy. The direction in effect mining that every od-hoc/temporacy employee who has been continued for one year visually be regularised even though (a) no vacancy is available for him-which means creation. of a vacancy: (b) he was not sponsored by Employment Exchange not wan he appointed in pursuance of a retification calling for applications which means he had entered by a hack drort of he was not eligible and qualified. for the post as the tune of his appointment; (d) his record. of service since his appointment is not satisfularry. Thereare the additional problems indicated by μ_2 in para /2which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify. such wholesale, unconditional orders. Moreover, from the more continuation of an ad-hac employee for one year, it cannot be presumed that there is need for regular pass. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of humb in such matters. Conditions and discumstances of one unit may not be the same as of the

other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications. it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be smally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose enery itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the condidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbers on such a nonexisting vacancy would never survive for consideration and even if such purported regularisation or confirmation i: given, it would be an exercise in fullisy. It would amount to decorating a still born baby. Under these circumstances. there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity. Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VEDYAKTHE&ORS, Vs. STATE OF BIHAR AND CRS, wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under thuse circumstances, their disengagement from service cannot be construed to be a retrenchment under the LD. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the L.D. Act retrenchment procedure following principle of 'last come . first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retreaching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his junious were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKAVA UMA DEVI, the Supreme Court has held that marely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permonent merely on the strength of such-continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hac employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to hargain—not at arms length since he might have been searching for some employment so us to make out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettisan the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another made of public appoinment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "nodess the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee...... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in valuation of constitutional solution enshrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2006 21.1.N 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANILLY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not employ any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Gort, in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinhelpre."

Relying on all these decisions, learned counsel. for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed th regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five semigraems emerged into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour author; ues was only to festore the wait list and also for appointment thereon as temporary messenger as per wan list. Under such discumitances, after expiry of the period mentioned. in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the proparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner. i

 I first much force in the contention of the learned. counsel for the Respondent, Though in the Claim Statement, the Peritioners have made so many allegations with regard to preparation of wait list and also settlements entered imo between the ≵espondent/Rank and Federation, at the time. of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list Further, the Petitioners have not questioned the settlement and they have not alleged that semiement was not a bonufide in nature or it has been arrived at on account of main fide, misrepresentation, fraud or even corruption or other inducements. Under such discumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Hank has got sauctioned posts for temporary employees in he absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Hank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in hance and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary enables are not intitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt, in the wake of prevailing market economy, globalisation, privatisation and outsourcing is a vident, 1 find the Potitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, 1 find this point against the Petitioner.

Point No. 2:

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my toregoing, findings that the Petitioner is a temporary employee and he is not emitted to be absorbed in regular service of made permanent merely on the strength of such continuance of work, I find the Petitioner is not emitted to any relief as claimed by him. No Costs

Thus, the interence is answered accordingly.

(Dictated to the P.A.) transcribed and typed by lorn, corrected and pronounced by the lie the open court on this day the 31st fangary, 2(8)7.

K. JAYARAMAN, Presiding Officer

Witnesses Examined: -

For the Peritioner WWE Sri P. Thomas

WW2 Sii V S Ekambaram

For the Responden: MW Sn C. Mariappan

MW2Soi C Ramalingam

Documents Marked : --

Ex. No	Date	Description
<i>I</i> /.:	05 08 98	Xerox copy of the paper publication in day) Thanki based on Ex. M [
W-2	202-04-88	Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of fix, M1.
W3	24 04-93	Xerns copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.
W4	01 (5-91	Xem's copy of the advertisement in The Hindu on daily wages based on Ex. W4.
W5	26-08-91	Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wagers.
W6	15 (3-97	Xerox copy of the circular letter of Zonal Office. Chennal about filling up of vacancies of messenger posts.
W ?	25-03-97	Xeros copy of the circular of Respondent/Bank to all Branches

		regarding identification of messenger vacancies and filling them before	₩27	17-03-97	Xerox copy of the service particulars-J. Velmurugan.
W8	Nil	31-3-97. Xerox copy of the instruction in	W 28	26-03-97	Xerox copy of the letter advising selection of part time Menial — O. Pandi.
		reference book on staff about casuals not to be engaged at office/branches to do messengerial work.	W29	31-03-97	Xerox copy of the appointment order to Sri G. Pandi.
₩9	31-10-80		W30	Feb. 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle.
W 10	25-04-83	Xerox copy of the service certificate given by Park Town Branch of Respondent/Bank.	W31	13-02-95	Xerox copy of the Madurai Module Circular letter about Engaging temporary employees from the panel of wait list.
Wil	21-11-83	issued by Mannadi branch.	W32	09-11-92	Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of
W)2	13-07-89	Xerox copy of the service certificate issued by Chintadripert branch.	W33	09-07-92	messenger staff. Xerox copy of the minutes of the Bipartite
W13	25-07-95	Xerox copy of the service certificate	11.55	05 07 52	meeting.
W14	30-12-95	issued by Thousand Lights branch. Xerox copy of the service certificate issued by Thousand Lights branch.	W34	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for
W(5	25-01.96	Xerox copy of the service certificate issued by Mint Terminius branch.			implementation of norms-creation of part time general attendants.
W16	25431-96	Xerox copy of the service certificate issued by Mini Terminius branch.	W35	07-02-06	Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as
W17	25-01-96	Xerox copy of the service certificate issued by Mint Terminius branch.		21.12.05	general attendants.
WIS	25 (1) (16	•	W36	31-12-85	Xerox copy of the local Head Office circular about Appointment of
		Xerox copy of the service certificate issued by Mint Terminius branch.			temporary employees in subordinate
W19	25-01-96	issued by Mint Terminius branch.	For th	r Responde	
		issued by Mint Terminius branch. Xerox copy of the service certificate	For th	-	temporary employees in subordinate cadre.
W19 W20	25-01-96 08-01-97	issued by Mint Terminius branch. Xerox copy of the service certificate issued by Mint Terminius branch. Xerox copy of the service certificate issued by Thousand Lights branch.). Datic	temporary employees in subordinate cadre.
W19	25-01-96	issued by Mint Terminius branch. Xerox copy of the service certificate issued by Mint Terminius branch. Xerox copy of the service certificate issued by Thousand Lights branch. Xerox copy of the service certificate	Ex. No). Datic 17-11-87	temporary employees in subordinate cadre. at/Management : Description
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W19 W20 W21 W22	25-01-96 08-01-97 11-11-97 Nii	issued by Mint Terminius branch. Xerox copy of the service certificate issued by Mint Terminius branch. Xerox copy of the service certificate issued by Thousand Lights branch. Xerox copy of the service certificate issued by Thousand Lights branch. Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate care and service conditions.	Ex. No MI M2 M3 M4	17-11-87 16-07-88 27-10-88 09-01-91 30-07-96	temporary employees in subordinate cadre. at/Management:— Description Xerox copy of the settlement.
W19 W20 W21	25-01-96 08-01-97 11-11-97	issued by Mint Terminius branch. Xerox copy of the service certificate issued by Mint Terminius branch. Xerox copy of the service certificate issued by Thousand Lights branch. Xerox copy of the service certificate issued by Thousand Lights branch. Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate	Ex. No MI M2 M3 M4 M5	17-11-87 16-07-88 27-10-88 09-01-91 30-07-96	temporary employees in subordinate cadre. at/Management : Description Xerox copy of the settlement. Xerox copy of the minutes of conciliation
W19 W20 W21 W22	25-01-96 08-01-97 11-11-97 Nii	issued by Mint Terminius branch. Xerox copy of the service certificate issued by Mint Terminius branch. Xerox copy of the service certificate issued by Thousand Lights branch. Xerox copy of the service certificate issued by Thousand Lights branch. Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate care and service conditions. Xerox copy of the reference book on staff matters. Vol. 111 consolidated upto	Ex. No M1 M2 M3 M4 M5 M6	17-11-87 16-07-88 27-10-88 09-01-91 30-07-96 09-06-95 28-05-91	temporary employees in subordinate cadre. at/Management : Description Xerox copy of the settlement. Xerox copy of the minutes of conciliation proceedings. Xerox copy of the order in W.P.
W19 W20 W21 W22 W23	25-01-96 08-01-97 11-11-97 Nii Nii Nii	issued by Mint Terminius branch. Xerox copy of the service certificate issued by Mint Terminius branch. Xerox copy of the service certificate issued by Thousand Lights branch. Xerox copy of the service certificate issued by Thousand Lights branch. Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate care and service conditions. Xerox copy of the reference book on staff matters. Vol. 111 consolidated upto 31-12-95. Xerox copy of the call letter from Madural Zonal Office for interview of messenger post—V. Muralikannan.	Ex. No M1 M2 M3 M4 M5 M6 M7	17-11-87 16-07-88 27-10-88 09-01-91 30-07-96 09-06-95 28-05-91	temporary employees in subordinate cadre. at/Management:— Description Xerox copy of the settlement. Xerox copy of the minutes of conditiation proceedings. Xerox copy of the order in W.P. No.7872/91. Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa. Xerox copy of the order of Supreme Court
W19 W20 W21 W22	25-01-96 08-01-97 11-11-97 Nii	issued by Mint Terminius branch. Xerox copy of the service certificate issued by Mint Terminius branch. Xerox copy of the service certificate issued by Thousand Lights branch. Xerox copy of the service certificate issued by Thousand Lights branch. Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate care and service conditions. Xerox copy of the reference book on staff matters. Vol. 111 consolidated upto 31-12-95. Xerox copy of the call letter from Madarai Zonal Office for interview of messenger.	Ex. No M1 M2 M3 M4 M5 M6 M7	17-11-87 16-07-88 27-10-88 09-01-91 30-07-96 09-06-95 28-05-91 15-06-98	temporary employees in subordinate cadre. at/Management : Description Xerox copy of the settlement. Xerox copy of the minutes of conciliation proceedings. Xerox copy of the order in W.P. No.7872/91. Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa.

नई विल्ली, 1**9 जुलाई**, 2007

का,आ, 2183.— अध्वेद्योगिक विवाद अध्यनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट वैंक ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार और्धिंगिक अधिकरण चेत्रई के पंचाट (संदर्भ संख्या 238/2004) करे प्रकाशित करती है, जो केन्द्रीय सरकार को 19-7-2007 करे प्राप्त हुआ था।

> । सं. एल-12012/467/98-आई आर.(बी-1)] अजय कुमार, द्वेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2183.—In pursuance of Section 17 of the Industrial Disputes Act. 1947 (14 of 1947), the Central Government Industrial Tribunal-cum-Labour Coult, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 19-7-2007.

[No.L-12012/467/98-IR (B t)] AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007
PRESFNT

K. JAYARAMAN, Presiding Officer Industrial Dispute No. 238/2004

(Principal Labour Court CGID No. 165/99)

In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

S# J. Thomas

IPartv/Petitioner.

AND

The Assistant Deperal Manager, State Bank offindia.

: If Party/ Management

Z. O. Chemai.

APPEARANCE

For the Peticioner

: Sci V. S. Ekamberara,

Authorised Representative.

For the Management

Mrs. K. Veeramani. Advocates

AWARD

 The Central Government Ministry of Labour, vide Order No. 1.: \$2012/467/98 BR (B-I) dated 12:02-1999 has referred this dispute earlier to the Tamil Nade Principal Labour Court/Chennai and the said labour Court has taken. the dispute on its file as CGID No. 165/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT Cum Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No. 238/2004.

The Schedule mentioned in that order is as follows:—

"Whether the demand of the workman Shri J. Thomas, wait list No. 478 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3 The allegations of the Petitioner in the Claim Statement are briefly as follows:—

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Hank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary hasis at Nungambakkam, branch from 1986. The Petitioner was crally informed that his services were no more required. The non-employment of the Pethioner and other became subject matter before Supreme Court in the form of Writ Petition filed by State. hank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/ Bank in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Pedesation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement Was under consideration once again and they classified the workmen under three categories namely A. B. and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the presumbed format through Branch Manager of the Nungambakkam branch. He was called for an interview by a Committee appointed by Respondent/Hank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petirioner was informed orally to join at the branch where he initially worked as class IV employee. From 1986, the Petitioner has been working as a temporary messenger and some times. performing work in other branches also. While working on temporary basis in Chindadripet branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service. during the same period. While the Petitioner was working as such, the Manager of the branch informed the Peritomer neally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence,

the Petitioner raised a dispute with regard to his nonemployment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication: Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, be has made a fresh representation to Govt, to reconsider the reference and the Potitional requested the Raspondent Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularize him in service in the course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officet. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Parther, the settlements are repringnant to Section 25G & 25H of the LD. Act. The remination of the Petitioner is against the provisions of pera 522(4) of Sasary Award. Even though the settlement speaks about three categories only a single walt list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, ritedical benefits etc. to the remporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious bifirmities and it is not based on strict seniority and without any rationals. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank With all attendant benefits.

 As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Peritioner was not in continuous service. Hence the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The sequement drawn under provisions of Section 18(1) and 18(3) of I.D. Act in lieu of provisions of law.retrenchment and implemented by Respondent/Battk. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/ Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff

Federation which resulted in five settlements dated (7-11-87, 16-07-88, 07-10 88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of LD. Act, Interns thereof, the Petitioner was considered for permanent appointment as per his obgibility along with similarily placed other temporary employees and the Petitioner was wait listed as candidate No. 478 in wait list of Zonal Office, Chennai. So far 357 wait listed temporary candidates, out of 744 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of scallements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary who employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were sugaged for 240 days were to be considered and under category (B) the temporary 270 days aggregate temposary service in try continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per Clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off the date was extended upto 31-3-97 for filling up vacancies which were to arise upto 31. 12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due in the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees. were appointed and since the Petitioner was wait listed at 478 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from quentioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per semiements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casma labour. Further, for circle of Chemasi wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

- In the additional claim statement, the Petitioner. contended that he was having been sponsored by Employment Exchange and baving undergone medical evanunation, the Petitioner has fulfilled the criteria set out b) the Respondent/Bank for selection of candidate for appointment to the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right ensirined in the Constitution of India. In the year 1998, the Responden/Bank has issued a circular to the effect that under no direumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total has for his future coupleyment. Even though these were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily fitting up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.
- 6 Again, the Petitioner filed a rejoinder to the Counter Statement of Respondent, wherein it is stated all the scale ments made by the bank with the State Bank of India Staff Federation were under Section IA(1) of the Act and not order Section IB(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions Iaid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to a lege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in this favour.
- 7 In these circumstances, the points for my consideration are—
 - (i) "Whether the demand of the Petitioner in Wait List No. 478 for restoring the wait tist of temporary messenger in the Respondent/ Bank and consequential appointment thereupon as temporary messenger is justified?"
 - (F) "To what reitef the Petitioner is emitted?"

Point No. 1:

- In this case, on behalf of the Petitioner it is contended that the Peritioner in this case and the Politioners. in the connected industrial disputes have been sponsored. by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in pertnament vacaircies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition. No. \$42 (civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time. of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex.M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not hinding on them on the ground that they have been interviewed and selected in the permanent vacancy. and Respondent/Bank without any intimation or nauce denied an opportunity to work in the bank after 31-3-1997. and therefore, they have ruised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed. for reinstatement with back wages and other attendant benefits.
- On behalf of the Petitioner, it is contended that: these Petitioners were recruited as temporary employees. in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularization of service of the temporary employees and any settlement in this regard is redundant and in any case. the Petitioner is not bound by settlement under Section. 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in continuous period. of 12 calendar months and was not in continuous service. on 17-11-1987, therefore, they have no valid and enforceable. right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions. of Chapter V A of the LD. Act and it is preposterous to contend that the Petitioner has no valid and enforceable. right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996. LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S.

SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the LD. Act providing for retrenchment is not enseted only for the benefit of the workreen to whom. Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is unterrable. It is further contended that on hehalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex.M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the acttlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MW1 and MW2 and their testimonies during the cross examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex.M1 deals with categorization of retrenched temporary employees into Λ_i B, and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come first go' or' first come last go' and therefore, the categorization in Clause 1 is illegal. Clause I(a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc., for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as perbank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should be given permanent appointment in the bank service. Those casuals were given more beneficial treatment to the matter of arriving 21 qualifying service for interview and selection. But. temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/ Bank has alteged to have prepared only one wait list for each module as per Ex.M10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW I is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. Mt, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that sentement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called noninclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement

with regard to this wait list. Further the Hon'ble High Court has beld in its order dated 23-7-99 in W. P. No. 7872 of 1991, which is marked as an exhibit, in which it is stated that it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages. as per Bipartite Settlement white the 1988 settlement dealt. with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the respondent are not justified and combined the list of candidates covered under 1987. settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat on: class and their action undoubtedly amounts to violation of article 14 of Constitution of India.' Further, the averment of MW I and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or prepetrated by the Respondent/back by combing equals with unequals. It is further contended on behalf of the Petitioner that as perdeposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process. of selection and were paid wages on the basis of industrywise settlement, it is not so to in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Fix. M3 provides for the same norms to the casual as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M 10 namely wait list is not inconformity with the instructions of Ex. M2 and nonpreparation of separate panels amounts to violation of circular. Secondly, it has not been propared as perinstructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No. 11932/91 in W. P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait fist. Above all, Ex.M1 was not produced at the time of conciliation proceedings held during the year 1997. 98 held at Chemai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex.M10. before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2(00) of the LD. Act, 1947. Though the Petitioner's

work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorization as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitionar relied on the ralings reported in 1985, 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein in the Supreme Court has held that "to employ workmen as "padlics" casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workman is illegal". I carned expresentative further contended that Ex.M10 wait hist has not incen prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait first under Ex.M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement. but in after violation and in breach of it. Though clause 2(c) of Fk. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or possing within the prescribed period, he will be deemed. to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Peritioner who was in regular service of the Respondent/ Bank is arbitrary, mala fide and illegal and the Respondent/ Bank has not acted in accordance with the terms of sendement on absorption of nemporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a carry of minutes of conciliation proceedings dated 9.6-75 before Regional Labour Commissioner (Contral), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. MI to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M? and Mil interim orders passed by High Court of Mairus in WMP No.11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main wit has been disposed of in the year 1999 and therefore, they do not have any hearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001. and it constitutes post reference period and hence evidence or Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240

days and more in a continuous period of 12 calendar months. as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is: illegal and against the mandatory provisions of Section 25. and therefore, they are deemed to be in continuous service. of the Respondent/Bank and they are entitled to the benefits under the provisions of LD. Act. It is further contended on behalf of the Petitioner that though some of the Peritioners in the connected LDs have not completed. 240 days, since the Respondent/Bank has not taken into consideration and not included the Sandays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 140 days in a period of 12 calendar months. He also relied on the rulings. reported in 1985 ILLLI 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression factually. worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or penbut misst necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute. standing orders etc." It is further argued that call letters. produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement. on account of settlements/lapsing of wait lists and not of these Petitioners some of them have completed 340 days. and more in a continuous period of 12 calendar months. and they are in age group of 40 to 50 years and for no fault. of theirs, they find themselves stranded in life midsucant. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view. of the facus and discumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not amborized. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Section 18(1) and 18(3) of the ID Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bonafide and are made with uiterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank

was cogaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary measenger is also incorrect, they were engaged against leave vacancies. The sentement entered into by the Respondent/Bank and the federation were hour fide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the seulement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements. and operate throughout the country. Further, he relied on the rulings reported in 1991. I LLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Va INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under section 12(3) the union. entered into a settlement with the management settling the 4 8 m of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised. a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Coun has held that "in the absence of plea that the settlement reached in the course of conciliation is vitigted by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 If LLLI 1189. ASHOK AND OTHERS Vs. MAHARASHIRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognized majority union will be binding on all workmen of the establishment, even these who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law φontracts, the object obviously is to uphoid the sanctity of settlements reached with the active assistance of the Currelliation Officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rollings reported in 1997 I LLI 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "'settlements are divided intotwo categories namely (i) those arrived at outside the consitiation proceedings under section 18(1) of the LD. Act and (ii) those arrived at in the course of conciliation. proceedings under section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting

workman were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the ralings reported in AJR 2000 SC 469. NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not home fide in nature or that it has been. arrived at on account of fraud, migrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt, may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel. for the Respondent contended that though it is alleged. that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the dynamid of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Peritioner contended that the retrenchment made by the Respondent/Bank is not valid and be has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt, is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Sentement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive. in the matter of tenability of a reference and he reflect on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference. is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of

the Petitionemo find out the exact nature of dispute instead. of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service. or not for which he relied on the rulings reported in 1998. LABIC 1664 VANSAG NATHAN ORENTPAPERMILIS. Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunai cannot go believe the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507. A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatebly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a gedantic manner, but should consider the order of reference it a fair and reasonable marmer." He also argued that in Express Newspapers P. Ltd. case reported in AIR. 1993 SC 569 (he Supreme Court has held that "the Tribunal" has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the mattner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view. it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though to the reference, it is not mentioned that whether the retrenchment. is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/ Bank and therefore, this Tribunal can look into the pleadings. of the Peritioners and can decide whether the Peritioner is: entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, dow the Petitioner cannot question that he should be reinstated in service and he relied on the rolings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs.; K.V. VUEESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination."

acquires a right of appointment in Govt, service in an existing or a future vacancy ". In that case, pruning of select list op reduction in number of vacancies was made. in view of the impending absorption of steam surplus staff. and a policy decision has been taken to reduce the number. of vacancies and consequently, a certain number of bottom. persons were removed from the select list and the remaining. selectees were given appointments according to their comparative merits. In which, the Supreme Court has bold. that "fin such direumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He for their relied on the rollings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held. that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek personnent appointment. in the services of the hank. Considering the object with which the panel was prepared and the fact that it was a yearty panel exparing on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion. of their names in the said panel for permanent absorption. in the services of the bank, Whatever conditional rightthey had come to an end with the expiry of the nanel. The claim of the Respondents as comained in the W.P. was thus, misconcesved and therefore, the learned Single Judge. and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal. respectively." He further relied on the rosings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Sugreme Court has held that "candidates." included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question. the wait list and since there is no reals fide on the part of the Respondent/Bank in preparing the wait list, it cannor be said that preparation of wort list was made with mala fide. motive. Under such direumstances, after the expiry of the date namely 31-5-1997, the Petitioner cannot pread for restoration of the wall list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS, VS. PIARA SINGHAND OTHERS wherein the Supremo Court has held that 'mow coming to the direction that all those ad hor temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The orrection. has been given without reference to the existence of a vacancy. The direction is offect means that every ad-box / temperary employee who has been continued for one year. should be regularised even though (a) no vacancy is available for him which means treation of a vacancy: (b) he was not sponsored by Employment Exchange nor was heappointed in nursuance of a notification calling for applications which means he had entered by a back door. (c) he was not eligible and qualified for the post at the time. of his appointment; (d) his record of service since his

appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions reflect upon by the High Court justify such wholesale. unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rute of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must he moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 HSCC LASHWAN! KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts-"So for as the question of confirmation of these employees whose entry itself was iflegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an integular manner or on all-hoc basis against an available, vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incombent on such a nonexisting vacancy would never survive for consideration and even if such purported regularisation or confirmation. is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them. valid confirmation. The so called exercise of confirming these employees, therefore, remained a nutlity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption. in the Respondent/Bank, Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these, circumstances, their disengagement from service cannot be exhibitude to be a retrenchment under the LD. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts. their disengagement is not arbitrary." He further relied on

the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the LD.Act retrenebment procedure following principle of "last come - first go" is not mandatory but only directory, on sufficient grounds thown, the employer is permitted to depart from the said principle retrenching seniors and retaining junious. Though in this case, the Petitioner has alleged that his junious have been made permanent in banking service, he has not established with any evidence that his junious were made permanent by the Respondent/ Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that be has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with

 Learned Senior Advocate further argued that even. in recent decision reported in 2006 4 SCC | SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules, it is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature. is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever be gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpensage illegalities. and to take the view that a person who has temporarily or casually got employed should be directed to be continued. permanently. By doing so, it will be creating another mode. of public appointment which is not permissible." Further, the Supreme Court white laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified. persons, the same would not confer any right on the appointed...... It has to be clarified that merely because a temporary employee or a casual wage worker is continued. for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made. permanent merely on the strength of such continuance, if the original appointment was not made by following a due: process of selection as envisaged by relevant rules. Further, in CDJ 2006 SC 443 NATIONAL PERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of

appointment and if appointment is made without following the rules, the same being a pullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006. SC 395 MUNICIPAL COUNCIL, SUIANPUR Vs. SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in spectioned post, Reing a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshriped under Article 14 and 16 of the Constitution of India would be void in law. 7 Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself, would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this count probably having regard. to the changes to the policy decisions of the Govt, in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the sculed legal position, as noticed hereinhefore."

Relying on all these decisions, learned counsel. for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Putther, their prayer before the labour authorities. was only to restore the wait list and also for appointment. thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned. in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either. the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

in the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Pederation, at the time of reference, they have not questioned the settlement not the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona file in nature or it has been arrived at our occupant of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances. I find the Petitioners cannot now question the settlements at this

stage and since they are only temporary employees and sance it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed. I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are smilled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt, in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident. I find the Pentioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Peritioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work. I find the Peritioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Distated to the P.A., transcribed and typed by him, corrected and pronounced by the in the open court on this day the 31st January (2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:

For the Petitioner WWT Still Thomas

WW2 Sri V. S. Ekambaram

For the Respondent MWTSri C. Mariappan

MW2 Sri C. Ransalingam

Documents Marked :---

$\mathbf{D}_{\mathbf{k}}$, $\mathbf{N}_{\mathbf{k}}$	o. Date	Description
Wt	0:8 88	Xerox copy of the paper publication in daily Thanthi based on Ex.M1.
W2	20404-88	Xerox copy of the administrative guidelines Issued by Respondent/Bank for implementation of Ex.M1.
W3	34-04-91	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.

W4	01-05-91	Xcrox copy of the advertisement in The Hindu on daily wages based on Ex.W4	W22	26-03-97	Xerox copy of the letter advising selection of part time Menial—G. Pundi
W5	20-08-91	Xerox copy of the advertisement in The Hindu extending Period of qualifying	₩23	31-03-97 ·	Xerox copy of the apointment order to $\operatorname{Sri}\nolimits G.\operatorname{Pandi}\nolimits$
w 6	15-03-97	sevice to daily wagers. Xerox copy of the Circular letter of Zonal Office, Chemiai About filling up of	W24	Feb. 2005	Xerox copy of the pay slip of T.Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle.
₩7	25-02-97	vacancies of massenger posts Xerox copy of the circular of Respondent/Bank to all Branches	W 25	13-02-95	Xerox copy of the Madurai Module Circular letter about Engaging temporary employees from the panel of wait list
		regarding indentification of massenger vacancies and filling them before 31-3-97.	W26	09-11-92	Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff.
W 8	Nil	Xerox copy of the instruction in Reference Book on staff about casuals not to be engaged at office/baranches	W27	09-07-92	Xerox copy of the minutes of the Bipartite meeting.
** 115		to do messeagerial work	W28	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India Staff
17/9	N 1 1	Xerox copy of the service certificate issued by Nungambakkam Branch.			Bank of India Staff Federation for implementation of norms—creation of
Wio	21-05 -94	Xerox copy of the service certificate issued by Nungambakkam Branch.			part time general attendants.
wii	10 -06-94	Xerox copy of the service certificate issued by Royapettah Branch.	W29	07-02-06	Xerox copy of the local Head Office circular about Coversion of part time employees and redesignate them as
W12	07402495	Xerox copy of the service certificate issued by Elephant Gate Branch.	W30	34 14 DE	general attendants.
WI3	14-11 -9 5	- '	W-3U	31-12-85	Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate cade.
W]4	10-06-97	Xerox copy of the service certificate issued by Nungambaldean Branch.	Forti	e Respond	cane. mt/Management :
wiż	t2-06-97	Xerox copy of the service certificate		o. Deste	Description
		issued by Chintadripet Branch	MI	17-11-87	Xerox copy of the settlement.
W16	M	Xerox copy of the administrative guidelines in reference book on staff	M2	16-07-88	Xerox copy of the settlement.
		matters issued by Respondent/Bank	M3	27-10-88	Xerox copy of the settlement.
		regarding recruitment to subordinate care & service conditions.	M 4	09-01-91	Xerox copy of the settlement.
W17	Nil	Xerox copy of the Reference book on	M5	30-07-96	Xerox copy of the settlement.
	-10	Staff matters Vol. III consolidated upto 31-12-95	M6	09-06-95	proceedings.
W18	06-03-97	Xerox copy of the call letter from Madurai Zonal Office For interview of messenger	М7	28-05-91	Xerox copy of the order in W.P. No. 7872/91.
		post—V. Muralikarman	MB	15-05-98	Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa.
W19	06-03-97	Xerox copy of the call letter from Madurai Zonal Office For interview of messenger post—K. Subburaj	М9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
W30	06-03-97	Zonal Office For interview of messenger	МЮ	Ni .	Xerox copy of the wait list of Chennai Module.
W21	17-08-97	post—I. Velmurugan Xerox copy of the service particulars— J. Velmurugan	MII	25-10-99	Xerox copy of the order passed in CMP No.16289 and 16290/99 in W.A. No.1893/99.

गई दिल्ली, 20 जुलाई, 2007

बा.आ. 2184.—औद्योगिक विकाद अधिनियम, 1947 (1947 का 14) की थां। 17 के अनुसरण में, केन्द्रीय सरकार स्टेट वेंक ऑफ स्विचना के प्रबंधतंत्र के संबद्ध वियोधकों और उनके कर्मकारों के बीच, अनुबंध में विदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकंदन, वेंबई के पंचाट (संदर्भ संख्या 227/2004) को प्रकाशित करवी है, जो केन्द्रीय सरकार को 20-7-2007 को प्राप्त हुआ था।

> [सं. एल-12012/429/98-आईआः(बी-1)] अजय कुमार, डेस्क अधिकारी

New Delhi, the 20th July, 2007

S.O. 2184.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 227/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 20-7-2007.

[No. L-12012/429/98-JR (B-I)] AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007
PRESENT

Shri K. JAYARAMAN, Presiding Officer Industrial Dispute No. 227/2004 (Principal Labour Court CGID No. 126/99)

(In hematics of the dispute for adjudication under clause(d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Maznagement of State Hank of India and their workmen)

CETWOON

Sti M Ashok Kumar

: I Party/Petitioner

AND

The Apsistant General Manager, : If Party/Management State Bank of India, Z. O. Chennai.

APPEARANCE

For the Petitioner

: Sri V. S. Ekambereza,

Authorised Representative.

For the Management

 M/s. K. S. Sunder Advocates.

WARD

 The Central Government Ministry of Labour, vide Order No. L. | 2012/429/98-IR (B-I) dated 11-2-1999 has referred this dispute carrier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 126/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this-CGIT-cum Labour Coun, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as LD,No. 227/2004.

The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Sho M. Ashok Kumar, wait list No.468 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

 The allegations of the Petitioner in the Claim Statement are briefly as follows:—

The Petitioner was sponsored by Employment Exchange for the post of sub-staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Periamet branch from 19-3-1983. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees! Union in Writ Perition No. 542/87 which was taken up by the Suprame Court. The Respondent/ Bank, in addition to its counter, filed a copy of settlement. under Section 18(1) reached between management of State. Bank of India and Ali India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Periamet branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they bave not informed the result of interview and also with regard to appointment. But, the Peritioner was informed orally to join at the branch where he initially worked as a class IV employee. From 13-3-1984, the Petitioner has been working as a temporary messenger and some time performing work in other branches also. While working on temporary basis in HVF Avadi branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3 1997 that his services are not required any more and he need not attend the office from 1-4-1997. Hence, the Petitioner raised a dispute with regard. to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for

adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govi. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as Obtained prior to 31-3-1997 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it sugaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not men't consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G & 25H of the LD. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been Regularising according to their whim and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, have, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait fist suffers serious infirmities and it is not based on strict seniority and without any rationals. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendent benefits.

 As against this, the Respondent in its Counter. Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The seulement drawn under provisions of Section 18(1) and 18(3) of LD. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bong fide and made with ulterior motive. The Petitioner concealed the material facts. that he was wait histed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/ Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was esponsed by State Bank of Jadia Staff. Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 07-10-1988, 9-1-1991 and 30-7-1996.

The said settlements became subject matter of conciliation. proceedings and minutes were drawn under Section 18(3). of I.D. Act. In terms thereof, the Pesitioner was considered. for permanent appointment as per his aligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 466 in wait list of Zonal Office, Chennai. So far 357 wait listed temporary. candidates, out of 744 wait listed temporary employees. were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged. for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B, and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar. months and under category (C) the temporary employees. who have completed 30 days aggregate temporary service. in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36. calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to tapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement agreene and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, our of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 466 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is hable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981. does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plan, it is not correct to * say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlemesus, vacancies upto 31-12-94 were filled up against the waited list of temporary

comployees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennal wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

- In the additional claim statement, the Petitioner. contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Hank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cause of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshriped in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circlimstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Blank imposed total ban for his future employment. Even though there were sufficient number of vacancies in thass IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons. other than wait listed workmen according to their whims. and fancies. Hence, the Petitioner prays that an award may be passed in his favour.
- 6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondern, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions tail down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are commany to the rights of the Petitioner, Hence, the Petitioner prays that an award may be passed in his favour.
- In these circumstances, the points for my consideration are:
 - (i) "Whether the demand of the Petitioner in Wait List No. 468 for restoring the wait list of temporary messengers in the Respondent/Back and consequential appointment thereupon as temporary messenger is justified?"

- (a) "To what relief the Petitioner is entitled?"
 Point No. 1:
- In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners. in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank. in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in, the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen. concerned and while the matter was pending in Writ Petition No. 542 (civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. Ml. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and itlegal and they further prayed for reinstatement with back wages and other attendant benefus.
- 9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as remporary employees. in the Respondent/Bank under the guidelines and circulars. issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section. 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees. at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days dues not arise at all. Further, they have invoked the relevant provisions of Chapter V A of the LD. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retrenched messengers.

and are eligible to be reinstated, Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Ys. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the LD. Act providing for retrenchment is not esacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category. of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are attitutory in character. Further, a combined study of Ex. MI and the averments of MW1 and MW2 and their restimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause I of Ex. M I deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first. go' or first come -- last go' and therefore, the categorization. in Clause 1 is illegal. Clause 1 (a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis. and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories. of temporary camployees is not valid. Further, engaging casuals to do recssengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly probibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those caspals were given more beneficial realment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as perinstructions in Ex.W2 four types of waiting fists have to be prepared. But the Respondent/Hank has alleged to have prepared only one wait list for each module as per Ex. M 10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW I is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it. was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ext. ML M3 and M4 respectively. But, when MW1 has spoken about the setCononis, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his hald

statement. Further, according to MW1 want list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon ble High Court has held in its order dated 23-7-99. in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category. who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent. are not justified and combined the list of candidates covered. under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averagent of MW1 and the statements in Counter. Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals, it is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comparises of both messengerial and nonmessengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industry wise settlement, it is: not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides. for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 and 16 of Constitution. of India. Therefore, the Petitioner contended that preparation of Ex. M 1 namely wait list is not inconformity. with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/ published even after the Court order in WMP No. 11932/91 in W.F. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment. and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M I was not produced at the time of conciliation proceedings held during the year 1997-98 held. at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners. were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or other the settlement. on absorption of temporary employees, the expression that

that hey were edgaged in leave vacancy was used as a device to ake them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sadry Award are also violated. Further, the representative of the Petitioner relied on the sulings reported in 1985 4 SCC 201 HLD, SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies' casuals ortemporaries and to continue them as such for many years. with the objectiof depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M 10 west list has not been prepared in accordance with principle of seniority. In the legal sense, since the selected candidates with longest service should have priority over those who joined. the service letter and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acred in accordance with the law and the spirit of the settlement, but in ofter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment agains) existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or gosting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the asspective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Hank is arbitrary, male fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. MI to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No.11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/ Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post

reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners completed the service 240 days and more in a continuous period of 12 calendar. months as enshrined under Section 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are cutitied to the benefits under the provisions of LD, Act. It. is further contended on behalf of the Petitioner that though some of the Petitioners in the connected LDs have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays. and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rollings reported in 1985 II LLI 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression 'actually worked under the empinyer' cannot mean that thuse days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc." It is further. argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bankhas conducted. the interview and selected the temporary employees who have reported to have submitted their application forabsorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners. were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/ lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Peditioner in this case and the Peditioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Peditioners are estupped from making claim as they had accepted the settlements drawn under the provisions of Section 18(1) and 18(3) of the 1D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bonafide and are made with ulterior motive. Further, they have concealed

the material facts that the Petitioner was wait listed as perlength of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent Bank was engaging temporary employees due to business. exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the Federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly be was wait listed and therefore. the Peritioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements. and operate throughout the country. Further, he relied on the rulings reported in 1991 [1.] J 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reachest in the course of conciliation is vitiated by fraud, misrepresentation or energion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189. ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union. will be binding on alt workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity. of settlements reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of male fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLI 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under section 18(1) of the LD. Act and (ii) those arrived at in the course of conciliation proceedings under section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it

will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing umeasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAIASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bone fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt, may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel. for the Respondent contended that though it is alleged that they are not parties to the settlement, since the Federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not hinding on them and he is estopped from disputing the

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt, is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY. KOLLAM ILLAHOTEL AND SHOP WORKERS' UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the point

workman; to hardship involved in moving the machinery again". If further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitidner to find out the exact nature of dispute instead of reforing to answer the reference on merits". Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service (it not forjwhich he relied on the rulings reported in 1998) LAB IC 1664 VANSAGNATHAN ORIENT PAPER MILLS Vs. INDOSTRIAL TRIBUNAL & ORS, wherein the Madhya Bradesh High Court has held that "the Tribunal connot go behind the terms of reference, but that does not mean that[i] cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507. A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner of a pedantic manner, but should consider the order of reference in a fair and reasonable manner". He also argued that in Express Newspapers (P) Ltd.'s case reported to AER 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjustication. The Labour Coun is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court". Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid of not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/ Bank and therefore, this Tribunal can look into the pleadings of the Peckinners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is criticled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without apy substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14 Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wort list has been exhausted, now the Petitioner cannot question that he should be tensisted in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VUEESH wherein the Supreme Count

has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Covt. service. in an existing or a future vacancy". In that case, pruning of select list on reduction in number of vacancies was made. in view of the impending absorption of steam surplus staff. and a policy decision has been taken to reduce the number. of vacancies and consequently, a certain number of bottom. persons were removed from the select list and the remaining. selectoes were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory". He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the hank informed the Responsions that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment is the services of the bank. Considering the object with which the panel was prepared and the fact than it was a yearly punct expiring on 6-2-98, we are of the opinion. that the Respondence did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively": He further relied on the rulings reported in 1991/3 SCC 47 SHANKARSAN DASH Vs. UNION OF IND(A wherein the Supreme Court has held that "candidates included in morit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petisioner has no right to question. the wair list and since there is no male fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such disconstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied up the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS, Vs. PIARA SINGHAND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those adhoc temporary employees who have continued for more than a year should be regularised, we find a difficult to sostain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every adhoc/ temporary employee who has been continued for one year. should be regularised even though (a) no vacancy is available for him which means treation of a vacuably; (b) he was not aponsored by Employment Exchange nor was he

appointed in pursuance of a notification calling for applications which means he had entered by a back door, (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rate of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow: irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impogned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SOC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Poll Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these camployees." whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed capdidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a nonexisting vacancy would never survive for consideration. and even if such purported regularisation or confirmation. is given, it would be an exercise in futility. It would amount to decorating a still born haby. Under these circumstances, there was no occasion to regularise them or to give them. valid confirmation. The so called exercise of confirming these employees, therefore, remained a nothty." Therefore, tearned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular. vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption. in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the LD. Act. The

concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage camployees and have no right to the posts, their disengagement is not arbitrary". He further relied on the rulings reported in 1994 3 LLF (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 250 of the LD. Act retreachment procedure following principle of 'last come - first go' is not mandatory but only directory. on sufficient grounds shown, the camployer is permitted to depart from the said principle retreaching seniors and retaining junions. Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not catablished with any evidence that his juniors were made permanent by the Respondent/ Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and therefore, the claim is to be dismissed with costs.

Learned Senior Advocate further argued first even. in recent decision reported in 2006 4 SCC 1 SECRETARY. STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that "merely because a temporary coupleyee: or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made perspanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes, it may be true that he is not in a position to bargain -not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone; it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode. of public appointment which is not permissible." Purther, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strongth of such continuance, if the original appointment was not made by following a due.

process of selection as envisaged by relevant rules. Purther, in CDJ 2006 SC 443 NATIONAL PERTUJZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has hald that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee apon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of lettle, the Appellars for the purpose of recentting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enstrined under Article 14 and 16 of the Constitution of India would be void in law." Further, in 2006 & LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION VA.S.C. PANDER wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon hink to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privationshoo and outsourcing is evident, in view of the sattled legal position, as noticed hereinbefore."

16 Relying on all these decisions, featned coursel. for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Purther, when they have not been questioned the five settlements emeral into between the Respondent/Bank and Pederation and since they have not questioned the want list propaged by the Respondent/Bank, they are not matitled in dispute the same and they are estopped from doing so Further, their peayer before the labour authorities was only to restore the wait list and also for appointment thereon is temporary meaninger as per weit list. Under such circumstances, after expiry of the period mentioned in the softlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or manber allotted to them. Under such circumstances, it cannot be questioned by the Petitiones.

17. If find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitibners have made so many allegations with regard to preparation of wait list and also scittements entered into between the Respondent/Bank and Pederation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual is the wait list. Porther, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona

fide in nature or it has been arrived at on account of male. fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent /Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not intitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes to the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2:

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any reflect as claimed by him. No Costa.

Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007,)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:

For the Petitioner : WWI Sri M. Ashok Kumar

WW2 Sri V, S, Ekambaram

For the Respondent: MW1 Sri C. Mariappan

MW2 Sri C. Ramalingam

Documents Marked: --

Ex. No. Date

Description

 \mathbf{w}_1

01-08-88 Xerox copy of the paper publication in

daily Thanthi based on Ex. M1.

 w_2 20-04-83

Xerox copy of the administrative guidelines issued by Respondent/Bank

for implementation of Ex. Mi.

_		20.03 -10.0 -1 (144.7 2 0.440			197 L3, 1929 5009
₩3	2 44-9 1	Xerox copy of the circular of Respondent/Bank to all Branches	WI9		Xerox copy of the appointment order to Shri—G. Pandi,
W4	n oc n	regarding shooppies of daily wagers in massenger vacancies.	W20	Peb. 200	5 Xerox copy of the Pay Slip of T. Sekar for the mouth of February 2005 wait list
W4	01-05-91	Xerox copy of the advertisement in The Hindu duty wages based on Ex. W4.	₩21	13-02-95	No. 395 of Manhami Circle.
W5	20-08-91	Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagner.			Circular Letter about Engaging temporary employees from the penci of wait list.
W6	15-03-97	Xeros copy of the circuler letter of Zemai Office, Chemni about filling up of vacancies of masseager posts.	W22	9-11-92	Xmux copy of the Hend Office circular No. 28 regarding Norms for ametion of mastenger staff.
V/ 7	25-03-97	Xerox copy of the circular of Respondent/Bank to all Branchus regarding helentification of manager	W23	9-7-92	Xerox copy of the minuts of the Biperite meeting.
		vacancies and filling them before 31-3-97.	W24	09-7-92	Xerox copy of the settebacet between Respondent/Bank and All India Staff Bank of India Staff Federation for
W8	Ni	Xerox copy of the instructions in Reference Book on Staff about casuals not to be engaged at office/branches to			implementation of norms-creation of part time general attendents.
		do messesgarial work.	W25	07-02-06	Xizzox copy of the local Head Office circular about Conversion of part time
wy	17-08-88	Xarox copy of the service cordificate issued by Perjamet Beauch.			employees and redesignate them as General Attendants.
W10	05-01-98	issued by Chetpet Branch.	W26	31-12-85	circular about Appointment of temporary
WII	12-01-98	Xexox copy of the service certificate issued by Chintadripat Branch.	7 _4		employees in subordinate cades.
W12	Nil	Xerox copy of the administrative	_	_	test/Ademographycest :
	144	guidelines in Reference Book on Staff Matters issued by Respondent/Bank	Ex.Ni Ml	o. Date 17-11-87	Description Xerox copy of the actilement,
		regarding recruitment to apportinate care & service conditions.	M2	•	Xrana copy of the settlement.
W13	Nii	Xerox copy of the Reference Book on	мв	27-10-88	Xerox copy of the settlement.
		Staff Matters Vol. III compandated upto	M4	09-01-91	Xerox copy of the acttlement.
W 14	06-03 -9 7	31-12-95,	МS	30-07-96	Xerox copy of the settlement.
· · · ·	(C)-10-31	Xarox copy of the cull letter from Madural Amail Office for interview of messenger post—V. Marahikannas.	M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
W15	06-03-97	Xerox copy of the call letter from Machani Zonal Office for interview of messenger	M7	28-05-91	Xerox copy of the order in W.P. No.787291.
V16	06-03-97	poși————————————————————————————————————	M8	15-06-98	Xerox copy of the order in O. P. No. 2787/97 of High Court of Orless.
		Zonal Office for interview of messenger post—J. Velmuragan.	MĐ	Ю07 -99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
VE7		Xerox copy of the service particulars —I. Vetourogen.	MIC	NAT	Xerox copy of the west list of Chemnai Module.
V18		Kerox copy of the letter advising selection of part time Menial— G.Pandi.	MII		Xerox copy of the order passed in CMP No.16289 and 16290/99 in W.A. No.1893/99.

नई दिल्ली, 20 जुलाई, 2007

का,आ; 2185,—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, स्टेट बैंक ऑफ इंग्डिया के प्रबंधतंत्र के संबद्ध निकेषकों और उनके कर्मकारों के भीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण नेक्ष्तं के मंखाट (संदर्ध संख्या 226/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-7-2007 को प्राप्त हुआ था।

[सं. एस-12012/435/98-आईआर(बी-1)] अवद कुपार, द्रेस्क अधिकारी

New Delhi, the 20th Inly, 2007

S.O. 2185.—In purvance of Section 17 of the Industrial Hisputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 226/2004) of the Central Government, Industrial Tribunal-cum-Labour Court, Chennai as shown in the Amexime in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 20-7-2007.

[No. L-12012/435/98-JR (B-J)] AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM-LABOUR COURT, CHENNAL

Wednesday, the 31st January, 2007
PRESENT

Shri K. JAYARAMAN, Presiding Officer Industrial Dispute No. 226/2004 [Principal Labour Court CGID No. 125/99]

(In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri R. Chedgalvarayan.

: IParty/Petitioner

AND

The Assistant General Manager,

: Il Party/Management

State Bank of India, Z. O. Chengai.

APPEARANCE

For the Peditioner

: Sri.V.S. Ekambaram,

Authorised Representative

For the Management

: M/s, K.S, Sundar,

Advocates

AWARD

 The Central Government Ministry of Labour, vide Order No. 1-12012/435/98-IR (B-I) dated 11-2-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chepnal and the said Labour Court has taken the dispute on its file as CGID No. 125/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the Constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as LD.No. 226/2004.

2. The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Shri R. Chengalvarayan, wait list No.375 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as emporary messenger is justified? If so, to what relief the said workman is entitled?"

 The allegations of the Petitioner in the Claim Statement are briefly as follows:

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State. Bank of India and he was given appointment as messenger. after an interview and medical examination. He was appointed on temporary basis at Mint Terminus branch from 2-2, 1982. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and rahers became subject-matter before Supreme Court in the form of Writ Petition filed by State. Bank Employees' Union at Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/ Bank, in addition to its counter, filed a copy of settlement under section 18(1) tracked between management of State. Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption. of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement. was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Mint. Terminus branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But; they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 2-2-1982, the Petitioner has been working as a temporary messenger and some times performing work in other branches also. While working on temporary basis in Ayanavaram branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be inservice during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not required any more and he need not attend the office from

1-4-1997. Hence, the Petitiousz raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Peritioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Peritioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not men't consideration. The Petitioner was not a party to the acttlement mentioned by the Respondent/Rank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 250 & 25H of the LD. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been Regularising according to their whim and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Mence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

As against this, the Respondent in its Counter. Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of LD. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fixe and made with ulterior motive. The Petitioner conceated the material facts. that he was wait fisted as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/ Bank engaged the temporary employees for performance. of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 07-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under section 18(3) of LD. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 375 in wait list of Zonal Office, Chemiai, So far 357 with listed temporary candidates, out of 744 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Peritioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service m any calendar year after 1.7.75 or minimum 70 days aggregate temporary service in any continuous block of 36. calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid. and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 375 he was not appointed. The said settlements were bong fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamit Nada Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bunk and this Tribunal has no jurisdiction to extertain such plea. It is not correct to , say that documents and identity of Petitioner was varified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

- In the additional claim statement, the Petitioner. contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out. by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services. of the Petidoner as he has acquired the valuable right. enshriped in the Constitution of India. In the year 1998, the Respondent Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in memal category, thus, the Respondent/Bank imposed total ban for his future. employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank. deliberately delayed in filling up the vacancies by the wair. listed workmen with ulterior metive. The Respondent/Bank. has been arbitrarily filling up the vacancies with the persons. other than wait listed workmen according to their whims. and fancies.[Hence, the Petitioner prays that an award may be passed in his favour.
- 6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under section 18(1) of the Act and not under section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.
- In these circumstances, the points for my consideration are:
 - (i) "Whether the demand of the Petitioner in Wait List No. 375 for restoring the wait list of lemporary messengers in the Respondent/ Bank and consequential appointment thereupon as temporary messenger is justified?"

(ii) "To what relief the Petitioner is entitled?"Point No. 1:

- In this case, on behalf of the Petitioner it is: contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored. by Employment Exchange and they having been called for interview and having been selected and wait listed in terms. of the relevant guidelines/circulars of the Respondent/Bank. in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees. Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen. concerned and while the matter was pending in Writ Petition. No. 542 (Civil) 1987, the Respondent/Bank harriedly. entered into a settlement on the issue of absorption of temporary employees and filled it before the Supreme Court. at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. Ml. The Petitioner in this case. and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.
- On behalf of the Petitioner, it is contended that. these Petitioners were recruited as temporary employees. in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any seutement in this regard is redundant and in any case, the Petitioner is not bound by settlement under section. 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank in the effect that temporary employees at branches/offices are not allowed to be in service. exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retrenched messengers.

and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex, W2, W3and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.MI and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come- last go' and therefore, the categorization in Clause 1 is idegal. Clause 1 (a) of Ex.M1 provides an opposituality to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of tempocary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular measangerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those cannals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this. amendment which includes casuals affecting their interest. and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/ Bank has alleged to have prepered only one wait list for each module as per Ex.M 10 in this case. Those candidates under Ex.M10 were found suitable for appointment as metsengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Rx.M(0 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.MI, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-

inclusion except his bald statement. Further, according to MW I wait list under Ex.M10 was prepared on 2-5-92 but. there is no pleating in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear. that the 1987 settlement was concerned with the temperary. class IV employees who were paid scale wages as per-Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987. settlement and 1988 settlement since they furmed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MWI and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated. by the Respondent/Hank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait fist under Ex.M10 comprises. of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex.M 10 namely wait list is not isconformity with the instructions of Ex.M2 and nonpreparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as perinstructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, to wait list was released / published oven after the Court order in WMP No.11932/91 in W.P.No.7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates. date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility. attached to the wait list. Above all, Ex. M.I. was not produced. at the time of conciliation proceedings held during the year 1997-98 hold at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribanal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temperary employees,

the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (o) of the J.D. Act., 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Potitioner has performed the duties continuously which is still in existence, the categorisation as such is our valid and the payvisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Sopreme Court has held that "to employ workmen as baddies casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait. list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service latter and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law, Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement. but in utter violation and in breach of it. Though clause 2(e) of Eq. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a dandidate fails to secept the offer of appointment or posting within the prescribed period, be will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show blow he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averness of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent Bank is arbitrary, mala fide and illegal and the Respondent/ Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. MI to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M1) interim orders passed by High Court of Mactras in WMP No.11932/91 in W.P. No.7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the crossexamination had become apparent that they have no personal knowledge about the settlements which are marked as Fx. M3 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001

and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Section 25B and 25F of the industrial Disputes Act, therefore, their retreachment from service is illegal and against the mandatory provisions of Section 25. and therefore, they are deemed to be in continuous service. of the Respondent/Bank and they are entitled to the benefits. under the provisions of LD. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected LDs have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and bence, they have also completed 240 days in a period of 12 calendar months. He also reticd on the rulings reported in 1985 II LLI 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression 'actualty' worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or penbut must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. It is further, argued that call letters produced by the Petitioner with clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrencturient is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Potitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estupped from making claim as they had accepted the settlements drawn under the provisions of Section 18(1) and 18(3) of the LD. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bonafide and are made with ulterior motive. Purther, they have concealed

the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/ Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was weit listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 ILLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. V. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Prodesh High Court has held that "in the absence of plea that the sentement reached in the course of concillation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling. the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 LLLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under section 18(1) of the I.D. Act and (it) those arrived at in the course of conciliution proceedings under section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category mude with a recognised majority union has extended application as it will be binding on all workner of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contening workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contexting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Va STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "sentlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bana fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt, may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned coursel for the Respondent contended that though it is alleged that they are not parties to the scatternent, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retranslment made by the Respondent/Bank is not valid and he has to be reinstanted in service with full back wages etc. Hence, the Petitioper's contention against the reference made by the Govt, is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Pethtloner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor

workman ib hardship involved in moving the machinery again." It further held that "the Tribernal should look into the pleading sad find out the exact nature of pleading of the Petitioder to find out the exact nature of dispute instead of refusing to answer the reference on ments." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LABIC 164 VANSAGNATHAN ORIENT PAPER MILLS Vx INDUSTRIAL TRIBUNAL & ORS. wherein the Maditys Pradesh High Court has held that "the Tribunal cannot go behind the lexus of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rdlings reported in 1998 LAB IC 1507 A. SAMBANTHAN V. PRESIDING OFFICER, LABOUR COURT, NADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to donsider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR. 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should donsider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Laboral Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Pethioners have been retrenched from the Respondent/ Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is cutitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the astilement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be ministated in service and he relied on the relings, reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V.VIIEESH wherein the Supreme Court has

held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination. acquires a right of appointment in Govt, service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made. in view of the impending absorption of steam surplus staff. and a policy decision has been taken to reduce the number. of vacancies and consequently, a certain number of bottom. persons were removed from the select list and the remaining sciccrees were given appointments according to their comparative ments. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 199768CC584SYNDICATEBANIK&ORS Vs.SHANKAR PAUL AND OTHERS wherein the Supreme Court has held. that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearty panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion. of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional rightthey had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SOC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Styreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question. the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with male fide. motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the ralings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PLARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-har/ temporary employee who has been continued for one year. should be regularised even though (a) no vacancy is: available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for

applications which vieum he had entered by a back door (c) he was not eligible and qualified for the post at the time of his appointment (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an *ad-hoc* employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance. extends to several years. Purther, there can be no rule of humb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow: irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the selevant. facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the unpugned directions must be held to be totally untenable and unsustainable. Thus, the Sopreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 LISEC I ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on od-hoc basis against an available. vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a multity." "Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave. vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 Sec 3657 HIMANSHU KUMAR VIDYARTHI & ORS V& STATE OF BIHAR AND ORS, wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the LD. Act. The concept of retrenchment therefore, cannot be stretched to

such an extent as to cover these employees. Since they are only thilly wage employees and have on right to the pasts. their disengagement is not urbitrary." He further relied on the relings reported in 1994 3 L.L.J (Supp.) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the L.D. Act remembraces procedure following principle of 'but come-first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining jurious. Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/ Bank. Any how, if the Petitioner has shown mything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. in such circumstances, the prayer for reinstatement in the services of Respondent/Bunk cannot be given to the Petitioner and, therefore, the claim is to be dismissed with CORES.

Learned Senior Advocate further argued that even. in recent decision reported in 2006 4 SCC 1 SECRETARY. STATE OF KARNATAKA Vs. UMA DEVI, the Sourceme Court has held that merely because a temperary employee. or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be shanrhed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant roles. It is not open to the Court to prevent regular recrustment at the instance of temporary amployees whose period of employment has come to us end or of ad-loc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either (emporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be tree that he is not in a position to bargain not at arms length since be might. have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegistries. and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Purther, the Supreme Court while laying down the law, has elearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee...... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. Further,

in CDI 2006 SC 443 National Fertilizers Ltd. and Others Va. Somvir Singh, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an couple) see upon the expiry of purported period of probation would not arise." Putther, in CDI 2006 SC 395 Municipal Council., \$ujanpur Vs. Surinder Kumar, the Supreme Counhas held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its troployees was bound to follow the recruitment rules. Any commitment made in violation of such rules as also in violation of constitutional scheme enshriped under Article 14 and 16 of the Constitution of India would be void in law." Fusiher, in 2006 2 J.I.N 89 Madhya Pradesh State. Agro Industries Development Corporation Vs. S.C. Pandey wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself invoid not confer any legal right upon him to be regularised in service. " The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position. *8 noticed hereinbefore."

Relying on all these decisions, learned counsel. for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circemstances, it cannot be questioned by the Petitioner. :

17. If ind much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement hor the number altotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or

other inducements. Under such direcumstances. I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribanal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed. I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contented that in a similar cases, this Tribsmal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief

19. But, I find since the Supreme Court has held that temporary employees are not intitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident. I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2:

The next point to be decided in this case is to what relief the Petitioner is emitted?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January 2007)

K. JAYARAMAN, Presiding Officer

Witnesses Examined: -

For the Petitioner WW1 Sri R, Chengalvarayan

WW2.Sri V. S. Ekambaram

For the Respondent MW1 Srr C, Mariappan

MW15riC Ramalingam

Documents Marked:-

Ex.No Date Description

Wt 1-8-88 Xerox copy of the paper publication in

daily Thanthi based on Ex. M1.

W2 20458 Xerox copy of the administrative

guidelines issued by Respondent/Bank

bx implementation of Ex. M),

<u> </u>					
W3	2 4 4 9 1	Xerox copy of the circular of Respondent/Bank to all Branches	₩21	26-3-97	Xerox copy of the letter advising selection of part time Menial—G. Pandi.
		regarding absorption of daily wagers in Messenger vacancies.	W2 2	31-3-97	Xerox copy of the of the appointment order to Sri O. Pandi.
W4	1-5-91	Xezox copy of the advertisement in The Hindu on daily wages based on Ex. W4.	W23	Feb. 2005	Xerox copy of the pay slip of T. Sekar for the mouth of February, 2005 wait list No.
W5	20-8-91	Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wagers.	W24	13-2-95	395 of Madami Circle. Xerux copy of the Madami Module.
W6	15-3-97	Xerox copy of the circular letter of Zonal Office. Chennai about filling up of			Circular letter about Engaging temporary employees from the punel of wait list.
W7	25-3-97	vacancies of messenger posts. Xerox copy of the circular of	W2 5	9-11-92	Xerox copy of the Head Office circular No. 28 regarding Norms for smetion of messenger staff.
	2.02.	Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before	W26	9-7-92	Xerox copy of the minutes of the Bipartite meeting.
₩8	Ni	31-3-97. Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work.	₩27	9-7-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms-creation of part time general attendants.
W9	22-2-84	Xerox copy of the service certificate issued by Mint Terminus Branch.	W28	7-2-06	Xerox copy of the local Head Office circular about Conversion of part time
W 10	18-7 -9 5	Xerox copy of the service certificate issued by Mint Terminus Branch.			employees and redesignate them as general attendants.
wji	23-5-96	Xeron copy of the service certificate issued by Ayanavaram Branch.	W29	31-12-85	Xezox copy of the local Head Office circular about Appointment of temporary employees in subordinate
W 12	14-3-97	Xerox copy of the service certificate issued by Thousand Lights Branch.			cadre.
WI3	16-4-97	Kerox copy of the service certificate		For the Respondent/Management :	
		issued by Mint Terminus Branch.	Ex. N	o. Date	Description
W14	16-4-97	Xerox copy of the service certificate issued by Ayanavaram Branch.	M1	17-11-87	••
WI5	NI	Xerox copy of the administrative	M2	16-7-88	Xerox copy of the settlement.
		guidelines in reference book on staff matters issued by Respondent/Bank regarding recraitment to Subordinate	MB	27-10-88	Xerox copy of the settlement.
			M4	9-1-91	Xerox copy of the settlement.
		Care and Service Conditions.	M5	30-7-96	Xerox copy of the settlement.
W16	Ni	Xerox copy of the Reference Book on Staff maters Vol. III consolidated upto	M6	9-6-95	Xerox copy of the minutes of conciliation proceedings.
W17	6-3-97	31-12-95. Xerox copy of the call letter from Madurat	M7	28-5-91	Xerox copy of the order in W.P. No.7872/91.
		zonal office for interview of messenger post —V. Murailkannan.	ME	15-5-98	Xerox copy of the order in P. O. No. 2787/97 of High Court of Orissa.
W18	6-3-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj.	M9	10-7-99	Xerox copy of the order of Supreme Court in SLP No. 3062/99.
W19	63-97	Xerux copy of the call letter from Madural zonal office for interview of messenger	M10	N	Xerox copy of the wait list of Chennal Module.
W20	17-3- 9 7	post — J. Vehnumgan. Xerox copy of the Service particulars— J. Vehnumgan.	MI1	25-10-99	Xerox copy of the order passed in CME No.16289 & 16290/99 in W.A. No. 1898/99.

नई दिल्ली, 20 जुलाई, 2007

वन.३वं. 2186.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, कोन्द्रीय सरकार, स्टेट बैंक ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुसंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 225/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-7-2007 को प्राप्त हुआ था।

[सं एल-12012/428/98-आईआर(बी-ा)] अवय कुमार, डेस्क अधिकारी

New Delhi, the 20th July, 2007.

S.O. 2186.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 225/2004) of the Central Government, Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 20-7-2007.

[No. L-12012/428/98-Ik (B-I)] AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

> Wednesday, the 31st January, 2007 PRESENT

Shri K. JAYARAMAN, Presiding Officer Industrial Dispute No. 225/2004 (Principal Lubour Court CGID No. 124/99)

(In he mandr of the dispute for adjuditation under clause(d) of sub-section (I) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri M. Elterntai

: [Party/Petitioner]

AND

The Assistant General Manager, : Il Party/Management State Bank of India, Z. O. Chennii.

APPEARANCE

For the Petitioner

 Sri V. S. Ekamberam, Authorised Representative

For the Management

 M/s. K.S. Sundar, Advocates

AWARD)

 The Central Government, Ministry of Labour vide Order No. L. 12012/428/98-IR (R-I) dated 11-2-1999 has referred this dispute earlier to the Tanul Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 124/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT cum labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D.No. 225/2004.

The Schedule mentioned in that order is as follows;

"Whether the demand of the workman Shri M. Flomali, wait is No.465 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupen as temporary messenger is justified? If so, to what relief the said workman is entitled?"

 The allegations of the Petitioner in the Claim Statement are briefly as follows;

The Petationer was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Mammadi branch from August, 1984. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Perition filed by State Bank Employees' Union in Writ Petition No. \$42/87 which was taken up by the Supreme Court. The Respondent/ Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Mannadi branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From August, 1984, the Petitioner has been working as a temporary messenger and some times performing work in other branches also. While working on temporary basis in Kothur branch, another advertisement by the Respondent/Bunk was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not required any more and he need not attend the office from 1-4-1997. Hence, the Petitioner raised a dispute with regard to his nonemployment. Since the conciliation ended in failure, the

matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petrioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/ Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularize him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which bis services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of Para 522 (4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been Regularizing according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/ Bank with all attendant benefits.

As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement, The settlement drawn under provisions of Section 18(1) and 18(3) of LD. Act in lieu of provisions of law, retrenchment and implemented by Responden/Bank. The claim of the Petitioner is not bonu fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down to semiority. Due to the business exigency, the Respondent/ Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1967, 16-07-1988, 7-10-1988, 9-1-1991 and 30-7-1996.

The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of L.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Peritioner was wait listed as candidate No.465 in waitlist of Zonal Office, Chennai. So far 357 wait listed temporary candidates, out of 744 wait listed temporary employees were permanently appointed by Respondent/Bunk, It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, carpot turn around and claim appointment. Such of those temporary employees who were appointed were sugaged. for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for semiority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait fisted candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 465 be was not appointed. The said actilements were bono jittle which were the only workable solution and is binding on the Petitioner. The Petitioner is extupped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said sentements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nado Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31 · [2-94 were filled up against the waited list of temporary employees and vacuacies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/cassal laboure. Purther, for circle of Chemni wait list of daily wages was not finalized and hencement published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petilioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to diamiss the claim with costs.

- In the additional claim statement, the Petitioner. contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has folfilled the criteria set out by the Retpondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged to the messenger post in the subordinate cache of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enstarized in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workings with ulterior motive. The Respondent/Bunk has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.
- 6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated that all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the aettlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner, Hence, the Petitioner prays that an award may be passed in his favour.
- In these circumstances, the points for my consideration are:—
 - (i) "Whether the demand of the Petitioner in Wait List No. 465 for rentoring the wait list of temporary messengers in the Respondent/ Bank and consequential appointment thereupon as temporary messenger is justified?"
 - (ii) "To what relief the Petitioner is entitled?"

Point No. 1 :--

- 8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored. by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary entrployees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen. concerned and while the matter was pending in Writ Petition No. 542 (Civil) 1987, the Respondent/Bank hurriedly cotered into a scattlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition, This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M). The Petitioner in this case and the Petitioners in the connected cases attacked this seulement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant henefits.
- On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation. and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service. exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter VA of the LD. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Peritioners who are retrenched measengers and are eligible to be reinstated. Learned representative for the Petitioner

contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/ Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W6 25 well as Fix. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.MI and the averments of MWI and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A., B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come-first go' or 'first come-last go' and therefore, the categorization in Clause I is illegal. Clause I (a) of Ex.M1 provides an opportunity to persons who were engaged on cusual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked BB Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly probibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. These casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/ Bank has alleged to have prepared only one wait list for each module as per Ex.M 10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and aweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.M 1, M 3 and M 4 respectively. But, when MW i has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called moninclusion except his bald statement. Further, according to MW1 wait list under Ex.M10 was prepared on 2-5-92 but

there is no pleading in the Counter Statement with regard to this wait list. Purther the Hon'ble High Court has beld in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of cabridates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behulf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of cusuals. Therefore, both belongs to two different and distinct categories. But, Ex.M 3 provides for the same norms to the causals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex.M I namely wait list is not in conformity with the instructions of Ex.M2 and nonpreparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released / published even after the Court order in WMP No.11932/91 in W.P.No.7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in "The Hindu" dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of midal appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ea. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not provinced. at the time of conciliation proceedings held during the year 1997-98 hold at Chermai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document, it is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary couployers. the expression that they were engaged in leave vacancy was used as a device to take them out of the principal

clause 2 (00) of the LD. Act, 1947, Though the Petitioner's work in the Respondent/Bank is continuous and though the Peditioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Purther, the representative of the Petitioner relied on the rulings reported in 1985 4 SQC 201 H.D. SINGHV₅ RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as "badlies casuals." or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait lift has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service letter and therefore, the walt list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in later violation and in breach of it. Though chanse 2(e) of Ex. M4 states that candidates found suitable for permatient appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and be shall have no further claim for being quasidered for permanent appointment in the bank. The Respondent/Bank has not produced any document show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary to evidence in support of the averment and also fed the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, male fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. MI to M4 made in terms of Ex. M6. Though the Respondent/Bank producted Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No.11932/91 in W.P. No.7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner, Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no

application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Section. 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/ Bank and they are entitled to the benefits under the provisions of I.D. Act, It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected LDs have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II. LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression factually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or penbut must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and sciented the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub stuff in early 1980s but were denied further engagement. on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days. and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault. of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of section 18(1) and 18(3) of the I.D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bonafide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per

length of his engagement and could not be absorbed as bewas positioned down in the seniority. The Respondent/ Bank was engaging temporary employees due to business. exigency for the performance of duties as messanger. further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as remporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly be was wait hand and therefore. the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements. and operate throughout the country. Further, he relied on the rollings reported to 1991 HLLJ 323 ASSOCIATED GLASS INDUSTRIES LTD, Vs. INDUSTRIAL TRIBUNAL A.P.: AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent. further relied on the rulings reported in 1997 HLLU 1189. ASHOR AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombry High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union. will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from southing the settlement." It further held that "there may be excaptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under section 18(1) of the 1.D. Act and (ii) those arrived at in the course of conciliation proceedings. under section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the

first entegory, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting worksness also." He further relied on the, rulings reported in AJR 2000 SC 469 NATIONAL ENGINEERING ENDASTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the frac will of the parties and is a pointer to there being good will between there. When there is a dispute that the settlement is not bonn fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject author of yet another industrial dispute which an appropriate Govt. may refer for adjustication after examining the allegations as there is an underlying assumption that the settlement reached with the belp of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them. they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no opion of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not bloding on them and he is estopped from disputing the sámič.

11. Learned counsel for the Respondent forther confinded that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the writ list of temporary messengers in the establishment of Respondent/Bank and consequential appointment therenpon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt, is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of temblifity of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM IILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal carnot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find our some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into

the pleasing and find out the exact nature of pleasing of the Petitloner to find out the exact nature of dispute instead. of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service. or not for which he relied on the rulings reported in 1998. LABIC 1664 VAN SAGNATIJAN ORIENT PAPER MILLS Vs. IND@STRIAL TRIBUNAL & ORS, wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rutings reported in 1998 LAB IC 1507. A. SAMBANTHAN V_{5} , PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical. manner or a pedantic manner, but should consider the order. of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR. 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes; between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Count." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenciffnent. is valid for not, from the pleadings it is clear that the, Petitioners have been retreached from the Respondent/ Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged. by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13, I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is emitted to go into the question whether the relief project for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14: Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings, reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V.VIJEESH wherein the Supreme Court has held that; "the only question which falls for determination in this appeal is whether a candidate whose name appears

in the select list on the basis of competitive examination. acquires a right of appointment in Govt, service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made. in view of the impending absorption of steam surplus staff. and a policy decision has been taken to reduce the number. of vacancies and consequently, a certain number of bottom. persons were reasoned from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS VS SHANKAR PAUL AND OTHERS wherein the Supreme Court has held. that "by its letter duted 7-2-87 the bank informed the Respondents that the panel was valid for one year only. and that inclusion of their names in the panel was not toconfer on them any right to seek permanent appointment. in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion. of their names in the said panel for permanent absorption. in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge I and the Division Beach, when it first decided the appeal were right in dismissing the Writ Petition and the appeal. respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vy UNJON OF INDIA wherein the Supreme Court has held that "candidates." included in ment list has no indefensible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question. the wait list and since there is no made fide on the part of the Respondent/Bank in preparing the wait list, it cannot he said that preparation of wait list was made with mala fide. motive. Under such discumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead (or restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS, Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad hoc temporary employees. who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction i has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hae/ temporary employee who has been continued for one year. should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door. (c) he was not eligible and qualified for the post at the time.

of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us to para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of hamb in such matters. Conditions and circomstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 ITSEC 1 ASHWAN) KUMAR AND OTHERS VI. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be unted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hac basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." "Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank, Turther, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHIF KUMAR VIDYARTHL& ORS Vs. STATE OF BIHAR AND ORS, wherein the Supreme Court has hold that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot he construed to be a retrenchment under the I.D. Act. The concept of retreachment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts. their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the LD. Act retrenchment procedure following principle of "last come-first go" is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retreaching seniors and retaining juniors. Though in this case, the Petitioner has alleged that his jumors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/ Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SOC 1 Secretary, State of Kamataka Vs. Uma Devi, the Supreme Court has held that metely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was unt made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employers whose period of employment has come to an end or of adhad employees who by the very nature of their appointment. do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to hargain not at arms length since he might have been scarching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, if would not he appropriate to jettison the constitutional scheme of appointment, perpensate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while taying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged: by relevant rules. Further, in CDJ 2006 SC 443 National. Femilizers Ltd. and Others Vs. Somvir Singh, wherein the Supreme Court has held that "regularisation furthermore,

is not a mode of appointment and if appointment is made without following the rules, the same being a nuflity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 Municipal Council, Sujanpur Vs. Surinder Kumar, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Article 14 and 16 of the Constitution of India would be void in law," Further, in 2006 2 LLN 89 Madbya Prádesh State Agro Industries Development Corporation(Vs. S.C. Pandey wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself, would not confer. any legal right upon him to be regularised in service. " The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

Relying on all these decisions, learned counsel. for the Respondent contended that since the Petitioner has not been appointed for regular post nor he has been appointed in regular vacancy or sanctioned post, the Petitioner is upt entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not emitted to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities. was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the scalengents which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel the Respondent. Though in the Claim Statement, the Petitioness have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature for it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and sinte they are only temporary employees and

since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent /Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not insided to claim any rights for regularisation, merely because they have completed 24th days of continuous service in a period of 12 calendar months and the Supreme Coort has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident. I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent! Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2;

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Perinoner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any reiself as claimed by him. No Costs.

Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by the in the open court on this day the 31st January, 2007)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:

For the Petitioner WW1 Sri M. Fahumalai

WW2Sri V. S. Ekambararn

For the Respondent MW1 Sri C. Mariappan

MW2 Sri C. Ramalingam.

Documents Marked; -

Ex. No	. Date	Description
W1	1-8-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.
W 2	3U-4-88	Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of lix, M1.
W 3	2 4 4 9 1	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.

[मम]]	—खण्ड 3(i	i)] मारत का राजपत्र : अगस्	4, 200	7/आवर्ग 13	
W4	1-5-91	Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4.	W25	06-03-97	Xerox copy of the call letter from Machinal Zonal Office for interview of massenger post- J.Velmurugan.
N 5	20-8-91	Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers.	W26	17-03-97	Xerox copy of the service particulars— L'Velmuragan.
W6	15-3-97	Xerox copy of the circular letter of Zonal Office, Chemal about filling up of	W27	26-03-97	Xerox copy of the letter advising selection of part time Menial—G.Pandi
N 7	25:3-97	vacancies of messenger posts. Xerox copy of the circular of	W28	31-03-97	Xerox copy of the appointment order to Sri G. Pandi.
w ,	2 3-3-91	Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before	W29	Feb.2005	Xerox copy of the pay slip of T. Sekar for the mouth of February, 2005 wait lis No. 395 of Martural Circle.
WB	No	31-3-97. Xerox copy of the instruction in Reference book on staff about casuals	W30	13-02-95	Xerox copy of the Madurai Moduli Circular letter about engaging temporary employees from the panel of wait list.
	14 0 09	not to be engaged at Office/Branches to do messengerial work. Xerox copy of the service certificate	W 31	09-11-92	Xerox copy of the Head Office circula No. 28 regarding Norms for sanction of
W 9	16-9-87	issued by Mannedi Branch.			messenger staff.
OIW	1-8-88	Xerox copy of the service certificate issued by Manuadi branch.	W32	09-07-92	meeting.
WH	30 -9-9 3	Xerox copy of the service certificate issued by Elephant Gate branch.	W 33	09-07-92	Xerox copy of the scattement between Respondent/Bank and All India State Bank of India Staff Federation for
W12	19-10-94	Xernx copy of the service certificate issued by Elephant Gate branch.			implementation of norms—creation part time general attendants.
WI3	3-10-94	Xerox copy of the service certificate issued by HVF Avadi branch.	W 34	07-02-06	Xerox copy of the Local Head Office circular about conversion of part (in
W14	13-09-96	issued by Avadi branch.			employees and redesignate them general attendants.
W15	22-01 -96	issued by Elephant Gate branch.	W 35	31-12-85	circular about appointment of tempora
W16	15-03-96	Xerox copy of the service certificate issued by Nungambakkam byanch.			employees in subordinate cadre.
W17	10-03-97				dent/Management :
		issued by LHO Chennai branch.		o Date	Description Newsy community the authorized
W18	11-03-97	Xerox copy of the service certificate	M1	17-11-57 16-07-88	Xerox copy of the settlement. Xerox copy of the settlement.
W 19	17.06.07	issued by Thousand lights branch. Xerox copy of the service certificate	M2 M3		Xerox copy of the settlement
W 17	11-00-71	issued by Elephant Gate brunch.	M4	09-01-91	C-1
W20	15-07-97	Xerox copy of the service certificate	MS		Xerox copy of the settlement
		issued by Kottur brench.	M6	09-06-95	
W 21	Ni	Xerox copy of the administrative guidelines in reference book on stuff	DYSIO	(,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,	proceedings.
		matters issued by Respondent/Bank regarding recruitment to subordinate	M7	28-05-9	Xerox copy of the order in W No.787291.
W22	Ni	cathre & service conditions. Xerox copy of the Reference book on	М8	15-05-9	 Xerox copy of the order in O. P. 1 2787/97 of High Court of Orissa.
		Staff matters Vol. III consolidated upto 31-12-95.	М9	10-07-9	
W23	6-03-97	Xerox copy of the call letter from Madurai Zonal Office for interview of massenger	Mic	N N	Xerox copy of the walt list of Chen Module.
₩34	06-03-93	post—V Muralikannan. Xerox copy of the call letter from Madoria Zonal Office for interview of massenger post—K. Subburaj	MII	25-10-9	 Xerox copy of the order passed in Ct No.16289 and 16290/99 in W.A. I 1893/99.

नई दिल्ली, 20 जुलाई, 2007

का. 38. 2187.— औद्योगिक क्विचाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, स्टेट वैंक आंफ इण्डिया के प्रयंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्देष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 230/2004) को प्रकाशित करती है, वो फोन्दीय सरकार को 20-7-2007 को प्रयुत्त हुआ था।

[सं एल-12012/436/98-आई आर(बो T)] अंबय कुमार, डेस्क अधिकारी

New Delhi, the 20th July, 2007

S.O.: 2187,—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), rise Central Government hereby publishes the award (Ref. No 230/2004) of the Central Government, Industrial Tribunal-cum-Labour Court, Chemnal as shown in the Annexure in the Industrial Dispute herween the management of State Bank of India and their workmen, received by the Central Government on 20-7-2007.

INo. L-12012/436/98-IR (B-I)]
AJAY KUMAR, Desk Officer
ANNEXURE

BEFURE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007 PRESENT

Shri K. JAYARAMAN, Presiding Officer Industrial Dispute No. 230/2004

(Principal Labour Court CGID No. 149/99)

(In the matter of the dispute for adjudiation under clause(d) of sub-section (1) and sub-section 2(A) of Section 1ft of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen).

RETWEEN

Sri E. Ashokan

: I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management State Bank of India, 7. O. Chennai.

APPEARANCE

For the Petitioner

: Sri V. S. Ekambaram,

Authorised Representative

For the Management

: M/s. K.S. Sundar,

Advocates

AWARD

 The Central Government Ministry of Labour, vide Order No. Lat 2012/436/98-JR (B-I) dated 10-2-1999 has referred this dispute earlier to the Tamil Nadu Pyincipal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 149/99 and issued actives to both parties. Both sides entered appearance and filed their clasm statement and Counter Statement respectively. After the constitution of this CGIT com Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as 1.0.No. 230/2006.

The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Shri E. Ashokan, wait list No.374 for restoring the wait list of remporary messengers in the establishment of State Hank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is colitled?"

3. The allegations of the Peritioner in the Ciaim Statement are briefly as follows:

The Paritioner was spousored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Ambattor branch from 20-9-1984. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by Stare Bank Employees" Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/ Bank, in addition to its rounter, filed a capy of settlement under sections [8(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A. B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Peritioner also submitted his application in the prescribed format (arough Branch Manager of the Ambattur branch. He was called for an interview by a Committee. appointed by Responden/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee, From 20-9-1984, the Petitioner has been. working as a temporary measeager and sometimes performing work in other examples also. While working on temporary basis in MRL. Mateali branch, another advertisement by the Respondent/Bank was made regarding casual workers who were deported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on [31,3-1997 that his services are not required any more and he need not attend the office from

1-4. 1997. Hence, the Petition's raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the scalement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service le majust and illegal. Further, the settlements are repugnant to Section 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single want list has been prepared and the Respondent/Bank has been Regularising according to their white and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitismer and extracted the same work either by payment of petty cash or by directing him to work underassumed name or by both which amounts to unfair labour practice. The wait list suffers actious informities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The augagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of LD. Act in fieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in semority. Due to the business exigency, the Respondent/ Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was expoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-07-1988,07-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject-matter of constitution proceedings and minutes were drawn under section 18(3) of 1.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 374 in wait list of Zonal Office, Chennai. So far 357 wait listed temporary candidates, out of 744 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in Icave vacancies as and when it arose. When the Peditioner having submitted to selection process in territs of settlements drawn as per retrenchment provisions referred to above. cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement suberne and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temperary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid sculements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 374 hc was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Purther, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country, The Tamil Nadu Infustrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/ Bank and this Tribunal bas no jurisdiction to entertain such plea. It is not correct to say that documents and identity of

Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent measurages. As per settlements vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/cassal labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Hank has issued a circular to the affect that under no circumstances, wait listed persons like the Petitioner be sugaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies is class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed worknism with otherker motive. The Respondent/Bank has been artificately filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be paused in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under section 18(1) of the Act and not under section 18(3) of the Act, As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner, Highee, the Petitioner prays that an award may be passed in his favour.

- In these circumstances, the points for my consideration are:
 - (i) "Whether the demand of the Petitioner in Wait List No. 374 for restoring the wait list of temporary messengers in the Respondent/ Bank and consequential appointment

- thereupon as temporary messenger is justified?"
- (ii) "To what relief the Potitioner is entitled?" Point No. 1:—
- 8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait fisted in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary besis. After engaging there intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees. Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen. concerned and while the matter was pending in Writ Penison No. 542 (Civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final bearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. MI. The Petitioner in this case. and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.
- 9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter VA of the LD. Act and it is preposterous to contend that the

Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the LD. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25P applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Rz. W2, W3 and W8 as well as Bx. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are etatutory in character, Purther, a combined study of Ex. MI and the avenueuts of MWI and MW2 and their testimonics during the cross-exemisation will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M. deals with categorization of retreached temporary employees into 'A, B and C', but this categorization of 'A. H & C' is quite opposed to the doctring of "last come-first go" or first come— last go" and therefore, the categorization in Clause I is illegal. Clause I(a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casnal vacancies of messengers, farashes, cush coolies, water boys, aweepers esc. for absorption along with the other eligible categories of temperary employees is not valid. Further, engaging casuals to do mesagagerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters. copy of which is marked as Ex. W&. Porther, the appointment of chily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's eleculars/manuctions. In such circumstances, the absorption of canada along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on cassual basis should not be given promonent appointment in the bank service. Those campals were given more beneficial treatment in the matter of arriving at qualifying service for interview and relection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as perinstructions in Rs. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex.M (0) in this case. Those candidates under Ex.M10 were found. snituble for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10. was prepared, but it is mentioned in Bx.M10 that it was prepared based on the settlement dated [7-11-87, 27-10-88] and 9-1-91 which are marked as REM1, M3 and M4 respectively. But, when MWi has spoken about the

actriements, he denoted that actriement dated 27-10-88 was not included in the Madrus Circle since the High Court owks is there, but he has not produced any document in support of the so called son-inclusion except his hold. statement. Further, according to MW1 wait list under Ex.M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this walt list. Purther the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that "it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Ripartite Settlement while the 1968 settlement dealt with daily wager in Class IV category who were paid wages daily on motoul agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of condicious covered. under 1987 scatterment and 1988 settlement states they formed. two distinct and expensis classes and they current treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter. Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals: with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 comprises of both messengerial and nonmeasuragerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywine settlement, it is not so in the case of casuals. Therefore, hoth belongs to two different and distinct categories. But, Ex.M3 provides. for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 & 16 of Constitution of India. Therefore, the Petitioner contended that proparation of Ex.M 1 intunely want list is not inconformity with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ea. W2 circular regarding projected vacancies for the period from 1987 to 1994. Purthermore, no wait list was released/ published even after the Court order in WMP No. [1932/9]. in W.P.No.7572/91 directing the Respondent/Bank to release the list of successful cardidates purplent to the first advertisement published in The Hinds dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. Prote all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. Mil was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chemai and Madumi and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribenal meeting it as a confidential document. It is fauther contended on behalf of the Petitioner that though

the Respondent/Bank has alleged that these pecitioners were sugaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (oo) of the LD. Apt, 1947. Though the Petitioner's work in the Respondent/ Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Alward are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 2019LD, SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "wo employ (vorkmen as 'badlies casuals or temporaries' and to contidue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal," Learned representative further contemded that Ex. M10 wait list has not been prepared in accordance with principle of semonity in the legal sense, since the selected candidates with longest service should have pribrity over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be affered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescritied period, he will be decimed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document show how he has arrived. at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interimtorders passed by High Court of Madras in WMP No.11932/91 in W.P. No.7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1909 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/ Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/ Bank has no application to the Peritioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 2513 and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of LD. Act, It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected 1.Ds. have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and bence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rollings reported in 1985 II LLI 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION V_5 . MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute. standing orders etc. It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault. of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were put in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the

Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the LD. Act, in tieu of the provisions of law and implemented by the Respondent/ Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent Bank was engaging temporary cruployees due to business exigency for the performance of duties as messenger. Further, the allegation that he was spousored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The scalement entered into by the Respondent/Bank and the Federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the sement and accordingly be was wait listed and therefore, the Petitioner is estapped from questioning the settlement directly or indepently and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 TLLL 323 ASSOCIATED GLASS INDUSTRIES 1.TD, Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andina Pradesh High Court has held that "In the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misropresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 (1 LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even correction or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 l LLJ 308 K.C.P. LTD. Vs. PRESIDING OF ACER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two

caregories namely (i) those arrived at outside the contribution proceedings under section 18(1) of the LD. Act and (ii) those arrived at in the course of conciliation proceedings under section 18(3). A settlement of the first category has fimited application and binds merely parties to it and scillement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the scuttement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in ATR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. VA. STATE OF RAIASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of found, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govi. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the Federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner, Porther, he argued that no union of the bank has questioned the sculement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt, is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY. KOLLAM RILAHOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the

Kerala High Court has held that "mere wording of reference is not declisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material thefore it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioper to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998. LABIC 1004 VANSAGNATHAN ORIBNT PAPER MILLS Vs INDUSTRIAL TRIBUNAL & ORS, wherein the Madinya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the relings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, NADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to donsider the order under reference in a technical mariner or a pedantic manner, but abould consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd's case reported in AIR 1993 SC 500 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication, The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleasings it is clear that the Petitioners have been retreached from the Respondent Hank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is justified to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS V₈, K.V.VIII/ESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt, service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made. in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom. persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, derial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997-6-SCC 584-SYNDICATE BANK & ORS Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has beld that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption. in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH V≥ UNION OF DNDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question. the wait list and since there is no male fide on the part of the Respondent/Bank in preparing the wait list, is carnot be said that preparation of wait list was made with male fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him, Further, he relied on the ralings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PLARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those adhor temporary employees who have continued for more than a year should be

regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc/ temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time. of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in pera 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an *ad-hoc* employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rate of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put intone year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impropred. directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose catry itself was illegal and void is concerned, it is to be noted that question of configuration. or regularisation of an irregularly appointed candidate. would arise, if the candidate concerned is appointed in an pregular manner or on ad-hoc basis against an available. vacancy which is already sanctioned. But, if the initial entry fuelf is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born buby. Under these circumstances, there was no occasion to regularise them. or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave

vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS V& STATE OF BIHAR AND ORS, wherein the Supreme Court has held that "they are temporary coupleyees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the LD. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the LD. Act retrenchment procedure following principle of 'last come-first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retreaching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence. that his juniors were made permanent by the Respondent/ Bank. Any bow, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this. Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with ensis.

Learned Senior Advocate further argued that even. in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA YS, UMA DEVI, the Supreme Court has held that merely because a temporary employee. or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he it not in a position to bargain —not at arms length since he might have been searching for some employment to as to eke out his livelihood and accepts winnever he gets. But on that ground alone, it would not be appropriate to jetting the constitutional echeme of appointment, perpensise illegalities. and to take the view that a person who has temporarily or casually got employed should be directed to be continued. permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Purther, the Supreme Court while laying down the law, has clearly hold that "fundess the appointment is in terms of the relevant.

rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. It has to be clarified that merely because a temporary employee or a casual wage worker is continued. for a time beyond the term of his appointment, he would nor be entitled to be absorbed in regular service or made. permanent thereby on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. " Further, in QDJ 2006 SC 443 NATIONAL FERTILIZERS. LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made. without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006(SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER, KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to fullow the recruitment rules. Any recruitment made in violation of such rules as also in violation of conscitutional scheme enshrined under Article 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN BY MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION $V_{\rm S}$ S.C. PANDEY, wherein the Supreme Court has held that "only because an amployee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also hold that "the changes brought about by the subsequent decisions of this Court probably having regard to the changes in the policy decisions of the Government in the wake of plevailing market economy, globalisation, privatication and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

Relying on all these decisions, learned counsel. for the Respondent contended that since the Petitioner. has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is pot entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements jentered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not. entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Peritioner.

27. I find much force in the contention of the learned. counsel for the Respondent. Though in the Claim. Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements. entered into between the Respondent/Bank and Federation. at the time of reference, they have not questioned the settlement nor the number alkotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bonafide in nature or it has been arrived at on account. of malafide, misrepresentation, traud or even corruption or other inducements. Under such direumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not intitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard in the changes in the policy decisions of the Government in the wake of prevailing market economy, globulisation, privatisation and nurshureing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/ Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2:

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service of made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by one in the open court on this day the 31st January, 2007)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:

For the Petitioner : WW! Sri R. Ashokan

WW2 Sri V. S. Elrambaram

For the Respondent : MW1 Sri C. Marjappan

MW2 Sri C. Ramalingam

Documents Marked:			W18	6-3-97	Xerox copy of the call letter from Madorai
Eu. No. Date Description				zonal office for interview of messenger post — J. Vehaurugan.	
WL	L-8-88	Xerox copy of the paper publication in duity Thanthi based on Ex. M1.	W 19	17-3-97	Xerox copy of the service particulars— I. Vetmurugan.
W 2	204-88	Xerox copy of the administrative guidelines issued by respondent/Bank	₩20	26-3-97	Xerox copy of the letter advising selection of part time Menial—G. Pandi.
W3	24-4-91	for implementation of Ex. M1. Xerox copy of the circular of	W21	31-3-97	Xerox copy of the appointment order to Sri G. Pandi.
		Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.	W22	Feb. 2005	Xerox copy of the pay slip of T. Sekar for the roomh of February, 2005 wait list No. 395 of Madurai Circle.
W4	l-5- 9 l	Xerox copy of the advertisement in the Hindu on daily wages based on Ex. W4.	W23	13-02-95	Circular letter about engaging temporary
W5	20-08-91	Xeron copy of the advertisement in The Hindu extending period of qualifying service to daily wagers.	W24	09-11-92	employees from the panel of wait list Xerox copy of the Head Office circular No. 28 regarding norms for sanction of
₩6	15-3 -9 7	Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of mesocages posts.	W2 5	09-07-92	messenger staff. Xerox copy of the minutes of the Bipartite meeting.
₩7	25-3-97	Xero copy of the circular of Respondent/. Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.	W26	09-07-92	Kerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—accation of
₩ 8	NĒ.	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messangerial work.	W 27	07-02-06	part time general attendants. Xerox copy of the Local Head Office circular about conversion of part time employees and redesignate them as general attendants.
₩9	4-1-88	Xeros copy of the service certificate issued by Ambuttur Branch.	W28	31-12-85	
W 10	9-6-88	Xerox copy of the service certificate issued by Ambattur branch.	emplo		employees in subordinate cadre
₩ŧI	10-6-88	Xerox copy of the service certificate issued by SIDCO industrial Estate Branch.		he Newpoord io. Date	lent/Management : Description
			MI		Xerox copy of the settlewient.
WI2	10-4-97	Xerox copy of the service certificate issued by MRI. Branch.	M2		Xerox copy of the settlement.
			M3		Xerox copy of the settlement.
W 13	9-6-97	Xerox copy of the service certificate issued by Avadi Branch.	M4		Xerox copy of the settlement.
			M5		Xerox copy of the sattlement.
W14	ΝĐ	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate cadre & service conditions.	М5	09-06-95	Xerex copy of the minutes of conciliation proceedings.
			M 7	28-06-91	Xerox copy of the order in W.P. No.7872/91.
W15	Ni	Xerox copy of the Reference book on Staff matters Vol. III consolidated upto	M8	5-05-98	No. 2787/97 of High Court of Orisss.
WI6	6-3-97	31-12-95. Xerox copy of the call letter from Madural.	M	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
W 10	Q371	zonal office for interview of messenger post—V. Muralikannan.	MIO	N	Xerox copy of the wait list of Chemist Module.
WI7	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj	МП	25-10-99	Xerox copy of the order passed in CMP No.16289 and 16290/99 to W.A. No.1893/99.

नई दिल्ली, 23 जुलाई, 2007

कां.आ. 2188.—कर्मकारी राज्य नीमा अधिनियम, 1948 (1948 का 34) की धारा-1 की उप धारा (3) द्वारा प्रदत्त शिक्सियों का प्रयोग करते हुए, कंन्द्रीय सरकार एतद्द्वारा १ अगस्त, 2007 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याद-∮ (44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी है) अध्याय-∮ अर्थ है (भारा-76 की उप धारा (1) और धारा-77.78, 79 और β1 के सिवाय जो पहले ही प्रवृत्त होंगे, अधीत, अधीत,

"निगर निगम सुधियाना की सीमाओं के अन्तर्गत आने वाले सभी क्षेत्र[सिवाए उनके जिन पर कर्मचारी राज्य बीमः योजना पहले से लागु है।"

> [सं एस-380]3/20/07-एस.एस.-1] एस. दो. जेमियर, अयुर सचिव

New Delhi, the 23rd July, 2007.

S.D. 2188.—In excercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State information Act, 1948 (34 of 1948) the Central Government lettery abyoints the 1st August, 2007 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter-N and VI [except sub-section (1) of Section 16 and Sections, 77, 74, 79 and 81 which have already been brought into force; of the said Act, shall come into force in the following arx: in the State of Punjab namely:—

"Areas rithin the limits of Municipal Corporation Ludhiens except the areas already postified under ESI Scheme*

> [No. S-38013/20/2007-S. S. I] S. D. XAVIER, Under Secy.

नई दिल्ली, 23 जुलाई, 2007

का अर. 2189,—कर्मचारी राज्य बीमा अधिनियम, 1948 (1943 का 34) की धारा-1 की ठंप बारा (3) द्वारा प्रयंत शक्तिकों का प्रयोग करते हुए, केन्द्रीय सरकार एतदृहारा । उत्पन्न, 2007 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अच्याद-4 (44 व 45 धारा के सिजाय जो पहले से प्रयूत्त हो चुकी है) अध्याप-5 और 6 (धारा-76 की उप धारा (1) और धारा-77,78. 79 और धा के मि अथ जो पहले ही प्रयुक्त को वर चुको है) के उपजन्म राजस्थान के निम्हांलिखित शेषों में प्रयूत्त होंगे, अर्थांत, :--

"शिला- सि 'हां, तहसील पिष्टबाड़ा के सबस्य ग्रामों पिण्डवाड़ा [फल से ही कर्मर र सम्म चीमा अधिनियम 1948 की बात-1 (3) के तहत कार्यान्त्रः क्षेत्र को छोड़कर] हाम्होली, बीलर, अजारी, कांटल, वीरवाड़ा, पगराई, सिवेरा, मूरी, इन्द्र्य, केस्वपादर, राजपुरा, केशवर्गक, अमन्त्री, आदलां, इण्डोवेरी, मालप, वरली, कुण्डाल, कालुम्बरी, बाबेला, क्षंत्र, वागदरी, नवाबाम, गड़िया, कोजरा, जनपुर, झंकर, च्य्केली, जारशांग को अन्तर्गत आले बाले क्षेत्र।"

> [सं. एस-38013/21/07-प्स.एस.-I] एस. चो. जेवियर, अवर स्रविय

New Delhi, the 23rd July, 2007.

S.Cl. 2189.—In excercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act. 1948 (34 of 1948) the Central Government hereby appoints the 1st August, 2007 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI [except sob-section (I) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Rajasthan namely:

"The areas comprising the revenue villages of Pindwara [Excluding the areas already implemented Uls 1(3) of the ESI Act, 1948]. Inadoli, Beeler, Ajari, Kantal, Veerwara, Parlai, Sivera, Moovi, Undra, Kerlapadar, Rajpura, Keshawganj, Aamali, Sadalwa, Thandiveri, Malap, Varali, Kundal, Kalumbari, Sabela, Dhanga, Vagadari, Nawawas, Gadiya, Kojara, Janapur, Jhankar, Chawarli, Araasana in Tehsil Pindwara, District Sirohi,"

[No. S-38013/21/2007-8, \$1] S.D. XAVIER, Under Secy.

नई दिल्ली, 19 जुलाई, 2007

कारआ, 2190.— औद्योगिक विवाद अर्धिनियन, 1947 (1947 का 14) की पारा 17 के अनुसरण में, केन्द्रीय सरकार, स्टेट बैंक ऑफ इंग्डिया के प्रबंध श्व के संबद्ध नियोक्कों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण, बेजरे के पंचाट (संदर्भ संख्या 132/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-7-07 को प्राप्त हुआ था।

> [सं. एल-12012/424/1998-आईआर(बी: 1)] अजय कुमार, डेस्क अधिकारी

New Delhi, the 19th July, 2007.

S.O. 2190.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 132/2004) of the Central Government Industrial Tribunal-com-Labour Court, Chemiai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 19-7 2007.

[No.L-12012/424/1998-IR (B-I)] AJAY RUMAR, Desk Officer ANNEXURE

SEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007 PRESENT:

Shri K. JAYARAMAN, Presiding Officer Industrial Dispute No. 132/2004 [Principal Labour Court CGID No. 130/99]

(In the matter of the dispute for adjudiation under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

METWEEN

C. Rajendran (deceased)

: I Party/Petitioner

AND

The Assistant General Manager,

: Il Party/Management

State Bank of India, Region-L Tricky.

APPEARANCE

For the Petitioner

: Sri V. S. Ekamberam,

Authorised Representative

For the Management

M/s. K. S. Sundar,

Advocates

AWARD

- I. The Central Government Ministry of Labour, vide Order No. L-12012/424/98-IR (B-I) dated 11-2-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 130/99 and issued notices to both parties. But the Petitioner has not filed the Claim Statement before the Tamil Nadu Principal Labour Court. After the constitution of this CGIT-cam-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as LD. No. 132/2004 and notices were issued to both parties and both parties entered appearance and filed their Claim. Statement and Counter Statement respectively.
- The Schedule mentioned in that order is as follows:
 - "Whether the demand of the workman Shri C. Rajendran, wait list No. 630 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"
- 3. The allegations of the Petitioner in the Claim Statement are briefly as follows:

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV carire in State Bank of India and he was given appointment as messenger. after an interview and medical examination. He was appointed on temporary basis in Palayamkottai branch from 1980. The Petitioner was orally informed that his services. were no more required. The non-employment of the Petitioner and others became subject-matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in: addition to its counter, filed a copy of settlement under section 18(1) reached between management of State Bank. of India and All India State Bank of India Staff Pederation. and the settlement is with regard to absorption of Class IV temporary workmen who were depied employment after 1985-86 were classified in the settlement was under consideration code again and they classified the workmen.

under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of Palayamkottai branch. He was called for an interview by a Committee appointed by Respondent/ Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where be initially worked as a class IV employee. From 1980, the Petitioner has been working as a temporary massenger and sometime performing work in other branches also. While working on temporary basis in Pulayamkottai branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner urally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard. to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Government. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts. that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in semonity. Due to the business exigency, the Respondent/ Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-07-88, 07-10-88, 9-1-91, and 30-7-96. The said settlements became subject-matter of conciliation proceedings and minutes were drawn under Section 18(3). of LD. Act. In terms, thereof, the Petitioner, was considered. for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 630 in wait list of Zonal Office, Trichy. So far 212 wait listed temporary. candidates, out of 652 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave

vacancies at and when it arose. When the Petitioner having submitted to selection process in terms of settlements. drawn as per retreachment provisions referred to above, cannot turniaround and claim appointment. Such of those temporary employees who were appointed were engaged. for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to Other eligibility criteria, under category (A) the temporary employees jwho were sugaged for 240 days were to be considered and under category (B) the temporary employees) who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have opmpleted 30 days aggregate temporary service. in any calcindar year after 1-7-75 or minimum 70 days. aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause. 7, the length of temporary service was to be considered for sensority in the wait list and it was also agreed that wait list was to taped in December, 1991 and the cut off date was extended up to 31-3-97 for folling up vacancies which were to arise upto 31-12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemental the voluntary retirement scheme and even the permarkent vacancies stand substantially reduced. There werelno regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary. employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 652 wait listed candidates, 212 temporary employees were appointed and since the Petitioner was wait listed at 630 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlemeats directly or indirectly and his claim is liable to be rejected. Forther, the said settlements were not questioned by any union so far and the settlements of hank level settlements and operated throughout the country. The Tamil Nadu Industrial Eshablishment (Conferment of Permanent Status to Workmeth) Act, 1981 does not apply to Respondent/ Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also dot correct to say that the Petitioner was discharging the work of permanent messenger. As persettlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual tabour. Further, for circle of C'honnai wait list of daily wages was not finalized. and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent. absorption, lience, for all these reasons, the Respondent prays to dischise the claim with costs.

- 5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV. post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect. that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future. employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/ Bank has been arbitrarily filling up the vacancies with the persons other flian wait listed workmen according to their whims and funcies. Hence, the Petitioner grays that an award may be passed in his favour.
- 6. Again, the Petitioner filed a rejainder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the hank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, retruitment of class IV staff in the Respondent/Bank is in accordance with the instructions land down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W. P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.
- to these circumstances, the points for my consideration are:
 - 6) "Whether the demand of the Petitioner in Wait List No. 630 for restoring the wait list of temporary messengers in the Respondent/ Bank and consequential appointment thereupon as temporary messenger is justified?"
 - (i) "To what relief the Petitioner is entitled?"

Point No. 1 & 2 :-

8. When the matter was pending before this Tribunal at the time of evidence, it is reported that the Petitioner died and it is posted for taking steps. But, the LRs of the Petitioner have not taken any steps to implead them as LRs in this dispute from 6-12-2004. They have also not filed any memo stating when the Petitioner died or what steps they have taken to implead them in this dispute.

9. The reference made in this dispute is "Whether the demand of the workman for reatoring the wait list of temporary measurgers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified and for consequential appointment thereon as temporary messenger. It is only a personal right claimed by the Petitioner and since it cannot be said that the LRs of the Petitioner have no personal right to claim employment in the Respondent/Management, I find even in the event of reference being answered in favour of the deceased Petitlemer, this petition cannot be allowed. Therefore, I find the claim is abated and thus, it is dismissed but without any costs.

10. Thus the reference is disposed of accordingly.

(Dictated to the P.A., transcribed and typed by himcorrected and presonanced by use in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

र्मा दिल्ली, 19 चुलाई, 2007

कर् आ, 2191,—औस्त्रीक विकार ऑवस्थिम, 1947 (1947 का 14) की धारा 17 के अनुसरन में, केन्द्रीय सरकार, स्टेट कैंक ऑफ इण्डिया के प्रवंतनंत्र के संबद्ध निजेबकों और उनके कर्मकारों के बीब, अनुबंध में निर्देश्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण केर्द्ध के पंचाट (संदर्भ संख्या 2/2004) को प्रकाशित करती है, यो केन्द्रीय सरकार को 19-07-2007 को प्रान्त हुआ था।

> [र्स. एल-12012/293/98-आईआर(बी-I)] समय कुमार, टेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2191.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government bereby publishes the Award (Ref. No. 2/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennal as shown in the American in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 19-7-2007.

[No.L-12012/293/98-IR(B-I)] AJAY KUMAR, Desk Officer

ANNEXIES

BEFORE THE CENTRAL GOVERNMENT PRESTRIAL TREE INAL-CUM-LABOUR COURT, CHENNAI

> Weshinday, the 31st January, 2007 PRESENT

Shri K. JAYARAMAN, Presiding Officer Industrial Dispute No. 2/2004

[Principal Labour Court CGID No. 3/99]

(In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of

the Jathastrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workman)

METWEEN

Sci K. Genesan

: I Party/Petitioner

AND)

The Assistant General Manager, State Bank of India, Zonal Office : If Party/Management

Colmbatore.

APPEARANCES

For the Petitioner

: Sri V. S. Ettersberen.

Authorised Representative

For the Management

: M/s. K. S. Sandar,

Advocates

AWARD

). The Central Government Ministry of Labour, vide Order No. L-12012/293/98-DR (B-I) dated 01-02-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court. Chemia and the said Labour Court has taken the dispute on its file as CGID No. 3/99 and issued notices to both parties. Both sides entired appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cambabour Court, the said dispute has been transferred to this Tribunal for adjunication and this Tribunal has numbered it as LD. No. 2/2004.

The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Shri K Genesus, wait list No. 502 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

The allegations of the Petitioner in the Claim Statement are briefly as follows:

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Melapalayam branch' from 23-09-1981. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondents Bank, in addition to its counter, filed a copy of astilement under section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption. of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement. was under consideration once again and they classified

the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Melapayalam branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard, But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed otally to join at the branch where he initially worked as a class IV employee. From 23-09-1981, the Petitioner has been working as a temporary messenger and some times performing work in other branches also. While working od temporary basis in Melapalayam branch, another advirtisement by the Respondent/Bank was made. regarding descal workers who were reported to be in service during the same period. While the Petitioner was working as inch, the Manager of the brunch informed the Positioner deally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Pethioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunat for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, the has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him. after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular. service is utijust and illegal. Further, the settlements are repagnant to Section 25G & 25H of the LD. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sastry Award, Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent Bank has also not observed the instructions. regarding grout of increments, leave, medical benefits etc. to the temperatry weakened which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either. by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict senjority and without any rationale. Hence, for all these reasons the Petitioner prays to grant

relief of regular employment in Respondent/Bank with allamendant benefits

As against this, the Respondent in its Counter. Statement alleged that reference made by the Govi. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim. Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of LD. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts. that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/ Bank engaged the temporary employees for performance. of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff. Federation which resulted in five settlements dated 17-11-87, 16-07-88, 07-10-88, 9-1-91, and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3). of LD. Act. Interms thereof, the Peritioner was considered. for permanent appointment as per his eligibility along with Similarly placed other temporary employees and the Petitioner was wait lested as candidate No. 501 in wait list. of Zonal Office, Coimbatore, So far 211 wait listed temporary candidates, our of 705 wait listed temporary employees were permanently appointed by Respondent/ Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred. to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged. for 240 days were to be considered and under category (B). the temporary employees who have completed 270 days. aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary. employees who have completed 30 days aggregate. temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered, for seniority in the wait list and it was also agreed that wait list was to lapse in December. 1991 and the cut off dare was extended up to 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The

Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were 00 regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 705 wait listed candidates, 211 temporary comployees were appointed and since the Petitioner was wait listed at 501 he was not appointed. The said actilements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said scallements were not questioned by any union so for and the settlements ot bank level settlements and operated throughout the country. The Tamil Nada Industrial Establishment (Conferment of Permanent Status to Workman) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/ casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of walt list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner consended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberare and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshriped in the Constiturion of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances. wait listed persons like the Petitioner be engaged even in menial category, thus the Respondent/ Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category. the Respondent/Bank IV category, deliberately delayed in filling up the vacancies by the wait listed workmen with pherior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait fisted workmen according to facil whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

- 6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India. Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recrurement rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the actilement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner panys that an award may be passed in his favour.
 - In these circumstances, the points for my consideration are
 - (i) "Whether the demand of the Petitioner in Wait List No. 502 for restoring the wait list of temporary messangers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?
 - (ii) "To what relief the Peritioner is estitled?"

Point No. 1:

- 8. When the matter was taken up for hearing, it is reported by the representative of the Petitioner that he is not appearing for the Petitioner and the Petitioner has not appeared before this Court for further proceedings and hence, the Petitioner was called absent and set expants.
- 9. In this case, the Petitioner alleged that he was appointed by Respondent/Bank during 1981 and he was terminated during the year 1966-87 and again worked as a temporary messenger and all of a sudden, on 31-3-97 he was terminated form service without any untice or notice of compensation. Since he has continuously worked for more than 240 days in a continuous period of 12 calendar months, he is emitted to the benefits of Section 25F of the 1.D. Act. But, no evidence was address on behalf of the Petitioner nor produced any document to establish his contention. The Petitioner has not appeared before this Tribunal to substantiate his claim. As such, I find the allegations of the Petitioner are not established before this Tribunal. Hence, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.
 - 10. Thus, the reference is disposed of accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected, and pronounced by me in the open Court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

नई दिस्सी, 19 जुलाई, 2007

कर का. 2192.—औद्योगक विकाद अधिनियम, 1947 (1947 का 14) जी धरा 17 के अनुसरण में, केन्द्रीय सरकार, स्टेट बैंक ऑफ इंग्डिंग के प्रवंदांत के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगक क्षिकद में केन्द्रीय सरकार, औद्योगिक वैधिकरण चेत्रई के पंचाट (संदर्भ संख्या 281/2004) को प्रकारित काती है, जो केन्द्रीय सरकार को 19-7-2007 को प्राप्त हुआ था।

> [सं. एल-12012/628/98-आईआर (बी-1)] अवस्य कुमार, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O.; 2192.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government bereby publishes the Award (Ref. No. 281/2004) of the Central Government, Industrial Tribumal-cum-Labour Court, Chemnai as shown in the Amexure, in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 19-7-2007.

[No.L-12012/628/98-IR (B-T)] AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2607
PRESENT:

Shiri K. JAYARAMAN, Presiding Officer Industrial Dispute No. 281/2004 [Principal Labour Court CGID No. 294/99]

(In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the

Management of State Bank of India and their workmen)

Sci. P. S. Mbhanasundaram

: 1 Party/Petitioner

AN

The Assistant General Manager, : II Party/Management State Bank of India,

Z.O. Chemiai.

APPEARANCE

For the Petitioner

: None

For the Management

: None

AWARD

 The Central Covernment Ministry of Labour, vide Order No. I,-12012/628/98-IR (B-I) dated 3-5-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chernal and the said Labour Court has taken the dispute on its file as CGID No. 294/99 and issued portices to both parties. The Schedule mentioned in that order is as follows:

"Whether the domand of the workman Shri P. S. Mohanasundaram, wait list No.361 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

- 3. Though several notices were issued, no Claim Statement was filed on behalf of the Petitioner either before the Principal Labour Court or before this Tribumal and there is no representation on his behalf. Hence, the Petitioner was called absent and set ex-parte. Further, no memo of objection was filed on the side of Respondent, in spite of adjourning the case for several hearings. Hence, the II Party/Management was also called absent and set ex-parte.
- 4. In these circumstances, the points for my consideration are:
 - (i) "Whether the demand of the Petitioner in Wait List No. 361 for restoring the wait list of temporary measuragers in the Respondent/ Bank and consequential appointment thereupon as temporary measurager is justified?"
- (ii) "To what relief the Petitioner is entitled?"

Point No. 1 and 2 :-

- 5. As Lhave already stated in spite of several notices, Petitioner has not appeared before this Court nor filed Claim Statement and the II Party/Management also has not filed any memo of objection. Therefore, both parties are called absent and set ex-parte. In view of the above, I find both parties are not interested in pursuing this dispute. Hence, I find the Petitioner is not entitled to any relief. No Costs.
 - 6. Thus, the reference is disposed of accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open Court on this day the 31st January, 2007)

K. JAYARAMAN, Presiding Officer नई दिल्ली, 19 जुलाई, 2007

का,आ, 2193.— औधोंगिक विष्युद्ध अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, स्टेट बैंक ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण चेन्द्र के पंचाट (संदर्भ संख्या 21/2004) को प्रकाशित भरती है, जो केन्द्रीय सरकार को 19-7-2007 को प्राप्त हुआ था।

> [सं. एल-12012/274/98-**आईआ**र (**बी**-I)] अनय कुमार, बेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2193.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government bereby publishes the Award (Ref. No. 21/2004) of the Central Government Industrial Tribunal-cum-

Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of Indus and their workmen, received by the Central Government on 19-7-2007.

[No. L-12012/274/98-IR (B-I)) AJAY KUMAR, Desk Office

ANNEXLER

REFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM-LABOUR COURT, CHENNAL

Wednesday, the 31st January, 2007 PRESENT:

Shri K. IAYARAMAN, Presiding Officer Industrial Dispute No. 21/2004 [Principal Labbur Court CGJD No. 69/99]

(In the matter of the dispute for adjudation under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sci P Chandran

: I Party/Petitioner

AND

The Assistant General Manager,

: II Party/Management

State Bank of India, Z. O. Coimbatore

APPEARANCE

For the Petitioner

; Sri V. S. Ekamberem,

Authorised Representative

For the Management

: M/s, K.S. Sundar, Advocates

AWARD

1. The Central Government Ministry of Labour, vide Order No. L-12012/274/98-IR (B-I) dated 05-02-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 69/99 and issued notices to both parties. Even though both sides entered appearance the I Party has not filed Claim Statement and he has not appeared before the Principal Labour Court. After the constitution of this CGIT Cura Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as 1.D. No. 21/2004 and issued notices to both parties. In spite of adjourning the case for several hearings, the Petitioner has not filed Claim Statement. Hence, the Petitioner was called absent and set ex-parte.

2. The Schedule mentioned in that order is as follows:

Whether the demand of the workman Shri P. Chandran, wait list No.294 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is

justified? If so, to what relief the said workfirm is entitled?"

On hehalf of the Respondent memo of objection/ Counter Statement was filed, wherein it is alleged that reference made by the Govt, for adjudication by this Tribonal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of LD. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bong fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 07-10-1988, 9-1-1991 and 30-7-1996. The said seniements became subject matter of conditiation proceedings and minutes were drawn under section 18(3) of LD. Act. in terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Politioner was wait listed as candidate No.294 in wait list of Zonal Office, Coimbatore. So far 211 wait listed temporary candidates, out of 705 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were sugaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, Band C. Considering their temporary service and subject to other eligibility criteris, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temperary service in any continuous block of 36 catendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was

extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Peritioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancles. In terms of aforesaid settlements, out of 715 wall listed conditions, 211 temporary employees were appointed and since the Petitioner was wast listed at 254 he was not appointed. The said sectionems. were bonn fide which were the only workable solution and is bloding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the mid actilements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondant/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not currect to say that documents and identity of Petitioner was verified before the Petitionar was engaged. It is also not correct to say that the Petitioner was discharging the work of permanient messenger. As per settlements, vacancies optis 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list draws for appointment of daily wages/ casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and bence not published and there is only one wait list for the appointment of temporary employees. After the expury of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with

- In these circumstances, the points for my consideration are:
 - (i) "Whether the demand of the Petitioner in Wait List No. 294 for restoring the wait list of temporary messengers in the Respondent/ Bank and consequential appointment thereupon as temporary messenger is justified?"
- (ii) "To what relief the Petitioner is entitled?"Point No.1:
- 5. When the matter was taken up for enquiry, it is reported by the special representative of the Petitioner that he has up instruction from the Petitioner and he is not appearing for the Petitioner and hence, the Petitioner was called abtent and set expanse. Since the Petitioner neither appeared before this Court nor filed the Claim Statement to substantiate his claim, I find the Petitioner is not interested in pursuing this dispute and hence, he is not entitled to any relief? No costs.
 - 6. Thus, the reference is disposed of accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by the in the open court on this day the 31st January, 2007)

K. JAYARAMAN, Presiding Officer

नई दिल्ली, 19 जुलाई, 2007

बार आ. 2194.— औद्योगिक विवाद अधिनिवय, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, स्टेट बैंक ऑक इण्डिया के प्रबंधतंत्र के संबद्ध नियोक्कों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/ज्ञम न्यायालय, चेत्रई के पंचाट (संदर्भ संख्या 220/2004) को प्रकाशित करती है, भी केन्द्रीय सरकार को 19-7-2007 को प्राप्त हुआ था।

[मॅ. प्ल-120]2/346/98-आईआर (बी-7)] अजय कुमार, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2194.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 220/2004) of the Central Government, Industrial Tribunal-cum-Labour Court, Chennai as shown in the America in the Industrial Dispute between the management of India and the workmen, received by the Central Government on 19-7-2007.

[No.L-12012/346/98-IR (B-II)] AJAY KUMAR, Desk Officer ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAL

Widnesday, the 31st January, 2007 PRESENT:

K. JAYARAMAN, Presiding Officer

ladestrial Dispute No. 228/2004 [Principal Labour Court CGID No. 58/99]

(In the matter of the dispute for adjudition under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri K. Velu

: I Party/l'etitioner

AND

The Assistant General Manager,
State Bank of India.

: II Party/Management

Z.O. Chemai.

APPEARANCE:

For the Peritioner

: Sri V. S. Ekambaram,

Authorised Representative

For the Management

M/s. K.S. Sundar,

Advocates

AWARD

The Central Government, Ministry of Labour vide Order No. L-12012/346/98-fR(B-f) dated 3-2-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 58/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT Cum Labour Court, the

said dispute has been transferred to this tribunal for adjudication and this tribunal has sumbered it as LD. No. 220/2004.

The Schedule mentioned in that order is as follows:—

"Whether the demand of the workman Stri K. Velu, wait list No. 745 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified,? If so, to what relief the said workman is cutified?"

3. The allegations of the Perhitmer in the Claim Statement are briefly as follows:—

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State. Bank of India and be was given appointment as messenger. after an interview and medical examination. He was appointed on temporary basis at Vandavasi branch from 01-01-1985. The Petitioner was craffy informed that his services were no more required. The non-employment of the Petitioner and others became subject-matter before Supreme Court in the form of Writ Petition filed by State Bank Employees* Union in Writ Petition No.542/87 which was taken up by the Supreme Court. The Respondent/ Bank, in addition to its counser, filed a copy of settlement under section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement. was under consideration once again and they classified the workmen under three categories namely A, Band C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Vandavasi branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 01-01-1985, the Petitioner has been working as a temperary meaninger and some times performing work in other branches also. While working on temperary basis in Alatur branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service. during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the petitioner raised a dispute with regard to him ponemployment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjustication. Though reference was sent to this Tribanal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Goyl, to reconsider the reference and the Petitioner requested the Respondent/

Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up his universemable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in tempotary services after the actilement. The Petitioner was not aware of actilement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the actionment mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repognant to Section 25G & 25H of the LD. Act. The termination of the Petitioner is: against the provisions of pera \$22(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/ Bank has been regularising according to their whims and funcies. The Respondent/ Bank has also not observed the instructions regarding great of increments, leave, medical. benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing. him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/ Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Gove-foradjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of LD. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not born fide and made with ulterior motive. The Petitioner concealed the material facts. that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/ Bank engaged the temporary employees for performance: of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those comployees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated. 17-11-87, 16-07-88, 07-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under section 18(3). of LD. Act. In terms thereof, the Petitioner was considered. for permanent appointment as per his eligibility along with similarly placed other temperary employees and the Petitioner was wait listed as candidate No. 739 in waitlist of

Zonal Office, Chennai, So far 357 wait listed temporary candidates, out of 744 waitlisted temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary Messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as perretrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 catendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per Clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agree that wait list was in Japse in December, 1991 and the cut off date was extended upto 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the potmanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, our of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 739 he was not appointed. The said settlements were bena fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country The Tamil Nadu Industrial Establishment (Conference) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say than, the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary. employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/ casual Inbour. Further, for circle of Chennai wait list of duily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary

employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these teasons, the Respondent prays to dismiss the claim with costs.

- 5 In the additional claim statement, the Petitioner contended that he was baving been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV. post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, want listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ofterior morive. The Respondent/Bunk has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his (ayour,
- 6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under section [8(1) of the Act and not under section 18(3) of the Act. As per recruitment tules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P. No.7872 of 1991, the Petitioner questioned the settlement dated 27 10-88 and 9-1,-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.
- In these circumstances, the points for my consideration are—.
 - 6) "Whether the domand of the Pentioner in Wait List No. 745 for restoring the wait list of temporary messengers in the Respondent/ Bank and consequential appointment thereupon as temporary messenger is justified?"
- (ii) "To what relief the Peritioner is entitled?"Point No.1; ...
- When the matter was taken up for hearing, it is reported by the representative of the Petitioner that he is not appearing for the Petitioner and hence, the Petitioner was called absent and set expanse.

9. In this case, the Petitioner alleged that he was appointed by Respondent/Bank during 1985 and he was terminated during the year 1986-87 and again worked as a temporary messenger and all of a sudden, on 31-3-97 he was terminated form service without any notice or notice of compensation. Since he has continuously worked for more than 240 days in a continuous period of 12 calendar months, he is entitled to the benefits of Section 25F of the 1D. Act. But, no evidence was adduced on behalf of the Petitioner nor produced any document to establish his contention. The Petitioner has not appeared before this Tribunal to substantiate his claim. As such, I find the allegations of the Petitioner were not established before this Tribunal. Hence, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

10. Thus, the reference is disposed of accordingly.

(Dictated to the P.A., transcribed and typed by hint, corrected and pronounced by me in the open count on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Offices

भई दिल्ली, 19 जुलाई, 2007

का,आ, 2195,—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, स्टेट कैंक ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण चेन्द्र के मंचाट (संदर्भ संख्या 168/2004) को प्रकाशित करती है, जो अंन्द्रीय सरकार को 19-7-2007 को प्राप्त हुआ था।

> [मं एल-12012/27/99-आई आर (बी-I)] अजय कुभार, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2195.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 168/2004) of the Central Government, Industrial Tribunal-com-Lubour Court, Chennai as shown in the America in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 19-7-2007.

[No.L-12012/27/99-IR (B-f)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT:

Shri K. JAYARAMAN, Presiding Officer
Industrial Dispute No. 148/2004
[Principal Labour Court CGID No. 255/99]

(In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of

the Industrial Disputes Act, 1947 (14 of 1947), between the Maanagement of State Bank of India and their workmen)

BETWEEN

Sci S. Rangaraju

: 1Party/Petitioner

AND

The Assistant General Manager.
State Bank of India, Region-I

: II Party/Management

Trichirapalli.

APPEARANCE

For the Petitioner

: Sri V. S. Ekambaram,

Authorised Representative

For the Management

: M/s. K.S. Sundar.

Advocates

AWARD

- 1. The Central Government Ministry of Labour, vide Order No. L-12012/27/99-TR (B-I) dated 10-05-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 255/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT Cum Labour court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal bas numbered it as LD-No. 168/2004.
- The Schedule mentioned in that order is as follows:—
 - "Whether the demand of the workman Shri S. Rangaraju, want list No. 419 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified,? If so, to what relief the said workman is entitled?"
- The allegations of the Petitioner in the Claim Statement are briefly as follows:—

The Petitioner was sponsored by Employment Exchange for the post of sub-staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Tirumayam branch from 06-08-1982. The Peritioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No.542/87 which was taken up by the Supreme Court. The Respondent/ Bank, in addition to its counter, filed a copy of settlement under section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Pederation and the settlement is with regard to absorption of Class IV remporary workmen who were conferemployment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three caregories namely A, B and C.

Though the Classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Timmayam branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee, From 6-8-1982, the Petitioner has been working as a temporary messenger and some times performing work in other branches also. While working on temporary basis in Tirumayam branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the petitioner raised a dispute with regard to his nonemployment. Since the conciliation ended in failure, the matter was inferred to this Tribunal for adjudication, Though reference was sent to this Tribunal, the reference framed did not satisfy the greevance of the Petitioner, he has made a fresh representation to Govil to reconsider the reference and the Petitioner requested the Respondent/ Bank to continue to engage him in service as obtained prior to 31 3.07 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement, The Petitioned was not aware of settlement by which his services and miniber of days worked by him after interview do not merit oposideration. The Potitioner was not a party to the settlement mentioned by the Respondent/Bank before the contribution of fiver. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G & 25H of the LD. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait its has been prepared and the Respondent/ Bank has been; regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Balak engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious informities and it is not based on strict seniority and without any rationale. Rence, for all these reasons the Petitioner prays to gram relief of regular employment in Respondent/ Bank with all attendant benefits,

As against this, the Respondent in its Counter Statement alloged that reference made by the Govt, for adjustication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement 'of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of LD. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Peritioner is not bona fide and made with ultgrior motive. The Petitioner concealed the material facts that he was wair listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/ Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 77, 11-87, 16, 07-88, 07-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under section 18(3) of LD. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 419 in waithist of Zonal Office, Trithy, So far 212 wait listed temporary condidates, out of 652 waitlisted temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary Messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per refrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per Clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agree that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The Peritioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent

vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the moves and temporary employees were working to leave vacancies and not in regular permanent, cacancies, in terms of aforesaid settlements, Out of 652 wait listed candidates, 212 temporary employees. were appointed and since the Petitioner was wait listed at 419. We was not appointed. The said settlements were bone. fide which were the only workable solution and is binding. on the Petitioner. The Petitioner is estopped from Questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981. does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct. to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that, the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/ casual labour. Purther, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has au claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

In the additional claim statement, the Petitioner. contended that he was having been sponsored by emptoyment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right coshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with unerior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Pederation were under section 18(1) of the Act and not under section 18(3) of the Act. As per recraimment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank, Even in the Writ Petition before the High Court in W.P. No.7872 of 1991, the Petitioner questioned the settlement flated 27-10-88 and 9-1,-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

- In these circumstances, the points for my consideration are.
 - (i) "Whether the demand of the Petitioner in Wait List No. 419 for restoring the wait list of temporary messengers in the 'Respondent' Bank and consequential appointment thereupon as temporary messenger is justified?
 - (ii) "To what relief the Petitioner is entitled?"

Point No. L:-

- 8. When the matter was taken up for enquity, the Petitioner appeared and deposed his Chief Examination and when it was posted for cross examination of the Petitioner, he has not appeared for the same, even though the case was adjourned to so many bearings. It is reported by the representative for the Petitioner that he has no instruction from the Petitioner. Hence, the I Party/Petitioner was called absent and set exparte.
- 9. In this case, though the Petitioner alleged that he was appointed by Respondent/Bank during the year 1982 and he was terminated during the year 1986-87 and again he was engaged as a temporary messenger and all of a sudden, on 31-3-97 he was terminated from service without any notice or notice of compensation. Since he has continuously worked for more than 240 days in a continuous period of 12 calendar months, he is entitled to the benefits of Section 25F of the LD. Act. But, no evidence was adduced on behalf of the Petitioner nor produced any document to establish his contention. The Petitioner has not appeared before this Tribunal to substantiate his claim. As such, 1 find the allegations of the Petitioner was not established before this Tribunal. Hence, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.
 - Thus, the reference is disposed of accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:

For the Petitioner . None

For the Respondent MW1 Sri C. Mariappan

MW2 Sri T. L. Schvaraj

Documents Marked :			W16	26-03-97	Xerox copy of the letter advising
Ex. No. Date Description					selection of partitine Memal—G. Pandl.
WJ	01-0% \$ 8	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.	W17	31-03-97	Xerox Lopy of the approximent order to S.i.G. Panih
M.S	20-04-88	Xernx copy of the administrative guidelines Issued by Respondent/Bank for implementation of Ex. M1	W18	Peb 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madura Circle
W 3	2 4-04-9 1	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in	W19	13-00-95	Xerox copy of the Madural Module Circular letter shout Engaging temporary employees from the panel of wait list
W4	01-05-91	Messenger vacancies Kerox copy of the advertisement in The Hindu on daily Wages based on Ex. W4	W20	(9-11-92	Xerror copy of the Head Office circular No. 28 regarding Norms for sarction of messenger staff
W 5	20:08: 9)	Xerox copy of the advertisement in The Hindu extending Period of qualifying	W21	09-07-92	Xernx copy of the annutes of the Bipartite meeting
W6	15-03- 9 7	Office. Cheanai About filling up of vaconcies of messenger posts	W22	09-07-12	Xerox energy of the settlement between Respondent/Bank and All India Staff Bank of India Staft Federation for implementation of norms—creation of partitime general attendants
W7	25-03 97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of necessary vacancies and filling them before 31-3-3-97	WIR	U7-U2-U6	Xerox copy of the local Heat Office circular acout Conversion of part time employees and redesignate them as general attendants
W8	Nil .	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work	W24	31-22.85	Xerox copy of the local Head Office circular about Appointment of temperary employees in subordinate cadre.
W9	06-08-82	Xerox copy of the service certificate	For the Respondent/Management :		
		issued by Tirumayam branch		o. Date	Description
W 10	NI	Xerox copy of the administrative guidelines in reference book on staff	W:	17-11-87	Xerox copy of the settlement.
		matters issued by Respondent/Bank	W2	16/07-88	Xerox copy of the scalement,
		regarding recruitment to subordinate	W3		Xerox copy of the settlement.
39713	A.T.I	care & service conditions	W4		Xerox copy of the Settlement.
WI	Νī	Xerox copy of the Chapter XXX of Reference book on Staff matters regarding service conditions of part-time Employees & domestic servants	WS	XI-07-96	Xerox copy of the settlement.
			W6	09-06-95	Xerox copy of the minutes of conciliation proceedings
W 12	06-03-97	Xernx copy of the call letter from Madural zonal office For interview of	W7	28-05-91	Xerox copy of the order in W.P. No. 78709)
W13	06-03-97	messenger post—V. Muraiikannan	W8	15-05-98	Xerox copy of the order in OP, No. 2787/ 97 of High Court of Orissa
-112	NA. 301 /21	zonal office I'er interview of messenger post—K. Suhburaj	W9	10/07-99	Xcrox copy of the coder of Supreme Court in SLP No. 3082/94
W14	06-03-97	Xerox copy of me call letter from Madurai zonal office For interview of messenger post—I. Velmurugan	W 10	Nž	Xerox copy of the wait list of Triphy Module
W15	17-03-97	- "	WII	25 К199	Xerox copy of the order passed in CMP No. 16289 & 16290/99 in W.A. No. 1893/99

नई विल्ली, 19 जुलाई, 2007

का.आ. 2196,— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की भारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रवंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच,_ अनुबंध में निर्दिष्ट औद्योगिक नियाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेनाई के पंचाट (संदर्भ संख्या 10/2004) को प्रकारित करती है, जो केन्द्रीय सरकार को 19-7-2007 को प्राप्त हुआ था।

> (सं. एस-120)2/322/98-स्वर्ध आरं (बी-!)] अजब कुमार, डेस्क संधिकारी

New Delhi, the 19th July, 2007

5.O. 2196.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 10/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Amexure in the Industrial Dispute between the Management of State Bank of India and their workman, received by the Central Government on 19-7-2007.

[No. L-12012/322/98-IR (B-1)] AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL COVERNMENT INDUSTRIAL TRIBUNAL CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007 PRESENT: K. JAYARAMAN, Presiding Officer INDUSTRIAL DISPUTE No. 10/2004

[Principal Labour Court CGID No. 11/99]

(In the matter of the dispute for adjudication under clause (d) of sub-section (!) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of State Bank of India and their workmen).

RETWOON

Sri P. Rajendran : 1Party/Petitioner

AND

The Assistant General

□ Party/Management

Manager,

State Bank of India, Z.O. Combatore.

APPEARANCE:

For the Petitioner

Sri V. S. Ekambaram, Authorised Representative.

For the Management : M/s. K.S. Sundar, Advocates

· AWARD

The Central Government, Ministry of Labour wide Order No.L-12012/322/98-IR(B-I) dated 1-2-1999 has referred this dispute earlier to the Tamil Nada Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No.11/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the

conscitution of this CGIT-com-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D.No.10/2004.

The Schedule mentioned in that order is as follows:—

"Whether the demand of the workman Shri P. Rajendran, wait list No. 284 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

 The allegations of the Petitioper in the Claim Statement are briefly as follows:—

The Petitioner was sponsored by Employment Eachange for the post of sub staff in Class IV codre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at B. Komarapulayam branch from 10-5-1982. The Peritioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Sopreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/ Bank, in addition to its counter, filed copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied capityment after 1985-86 were classified in the settlement was under consideration cace again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the B. Kumarapalnyam branch. He was called for an interview . by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee, From 10-5-1982, the Peritioner has been working as a temperary messenger and some times performing work in other branches also. While working on temperary basis in B. Kumarapalayam branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and be need not attend the office from 1-4-97. Hence, the petitioner raised a dispute with regard to his nonemployment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Government to

reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bask took up an immeasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondenc Bank. at engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Paptioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in our absorbing him in regularservice is unjust and illegal. Further, the settlements are repugnam to Section 25G and 25H of the LD, Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whirns and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of perty cash or by directing him to work inderassumed mame or by both which, amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict semonity and without any rationale, Hence, for all these reasons the Petitioner prays to gram relief of regular employment in Respondent/Bank with all attendant benefits

 As against this, the Respondent in its County. Statement alleged that reference made by the Government for adjustication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service, Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section (\$(1) and 18(3) of LD. Act in lieu of provisions of law, retreachment and implemented by Respondent/Battik The claim of the Peritioner is not bona fide and made with oftenor motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed us he was positioned down in seniority. Due to the business exigency, the Respondent/ Bank engaged the temporary employee for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming pensament absorption and when their case was exposised by Stare Bank of India Staff Federation which resulted in five settlements dated 17-11-87,16-7-88, 7-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of LD. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibitity along with similarly placed other temporary employees and the

Perinoter was wall asted as candidate No. 284 in wait list of Zona, Office, Chimhatory, So far 211, west listed reinpursay. condidates, but of 705 wait listed temporary employees. were permanently appointed by Respondent/Bank It is failed to altege that the Petitioner worked as a temporary messenger. The Persuence was engaged only in leave vacaticles as 255 when it armse. When the Petitionet having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above. cannot turn ground and distin appointment. Such of those ter (porary employees who were appointed were engaged for more number of days and hence, they were appointed. under the settlement, employeek were categorised as A. B. and C. Considering their temporary service and subject to other, eligibility criteria, under category (A) the temporary. employees who were angaged for 740 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service many continuous block of 36 calendar. menths and under category (C) the temperary employees. wiso have completed 30 days aggregate temporary service. so any calandar year after 3-7-75 or minimum 70 days. aggregate temporary service in any continuous block of 35. calendar months were to be considered. As per charge 7, the length of temporary service was to be considered for seniority in the waithfar and it was also agreed that wair [5]. was to lapse in December, 1991 and the cut off date was extended uplic 71-3-97 for filting up vacancies which were to arise upth 31 10094. The Petitioner has no valid and onforceable right for appointment. The Respondent and implemented the voluntary retirement scheme and overthe permagent vacancies stand substantially even reduced. Incre were no regular vacaneaes available. The pacturaproblem was due to the thicks that all the aforested temporary employees were working to leave viscancies and out to regular permanent vaccatales. In terms of aforesaid settlements, out of 705 with 3xed candidases, 201 temporary. employees were appointed and since the Petitioner was with disted at NA he was not appointed. The said sarrientably were bodd find which were the only winkable. so ubon and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or maireatly and his claim is liable to be rejected. Further, the and settlements were not questioned by any union so far and the smillements of bank ravel settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conformers of Permanent Status to Workmen) Acr. 1981 coes not apply to Respondent/Bank. and this Tribunal has need an solution to emertain such plea. It is not correct to say that documents and identity of Perfriener was verified before the Petropper was espaged. It is also not correct to say that the Peritinger was discharging the work of permanant messenger. As persetflements, valuatioles upto 31,72,94 were filled up against the waited list of temperary amployees and vacanaics for 1995-96 has to be fitted up against the wait list draws for appointment of daily wages/casual labour. Further, for circle of Chernai wart list of daily wages was not finalized and kence not published and there is only one wan list for the

appointment of temporary employees. After the explanation list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim, with costs.

In the additional claim statement, the Petitioner contended that he was having been sponsored by cosployment exchange and having undergone medical examination, the peritioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the abordinate cadre of the Respondent/Bank on anatimously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the vervices of the Petitioner as he has acquired the valuable light enshrined in the Constitution of India. In the year 998, the Respondent/Bank has assued a circular to the of (ect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/ Hank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank ieliberately delayed in filling up the vacancies by the wait reger prorkings with alterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons wher than went listed workmen according to their whims and function. Hence, the Petitioner prays that an award may ite passed in his favour.

6. Again, the Petitioner filled a rejoinder in the counter Statement of the Respondent, wherein it is stated all the sentements made by the bank with the State Bank of India Staff Federation were under section 18(1) of the Act and continued Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

- 7. In these circumstances, the points for my consideration are:—
 - (i) "Whether the demand of the Petitioner in Walt List No. 284 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?
 - (ii) "To what relief the Petitioner is entitled?"

Point No. 1:

3. When the matter was taken up for hearing, it is reported by the representative of the Petitioner that he is not appearing for the Petitioner and the Petitioner has not appeared before this Court for further proceedings and hence, the Petitioner was called absent and set exparte.

- 9. In this case, the Peutoner alteged that he was appointed by Respondent/Bank during 1982 and he was terminated during the year 1986-87 and again worked as a temporary messenger and all of a sudden, on 51-5-97 he was terminated form service without any notice or notice of compensation. Since he has continuously worked for more than 240 days in a continuous period of 12 calendar months, he is emitted to the benefits of Section 251 of the LD. Act. But, no evidence was adduced on behalf of the Petitioner nor produced any document to establish his contention. The Petitioner has not appeared before this Tribunal to substantiate his claim. As such, 1 find the utilizations of the Petitioner were not established activity this Tribunal. Hence, I find the Petitioner is not entitled in any relief as claimed by him. No Costs.
- 10. Thus, the reference is disposed of accordingly. (Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Oifficer वर्ड दिल्ली, 19 जुलाई, 2007

क्ष्र.आ. 2197,—औह्योगिक विवाद अधिनियम. 1947 (1947) का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोबकों और उनके कर्मकारों के बीच, अनुश्रंभ में निर्देष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्हरं के पंचाट (संदर्भ संख्या 183/2004) की प्रकाशित करती है, औ केन्द्रीय सरकार को 19-7-2007 को प्राण हुआ था।

> [सं. एल: 12012/564/98-अपर्द आरं (बी-1)] अजय कमार, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2197.— In pursuance of Section 17 of the Industrial Disputes Act. 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.183/2004) of the Central Government Industrial Tribunal-cum-Labour Court. Chennai as shown in the Amexure in the Industrial Dispute between the Management of State Bank of India and their workman, received by the Central Government on 19-7 2007.

[No.1-12012/564/98-IR(B-I)] ALAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT, INDUSTRIAL TRIBUNAL CUM-LABOUR COURT, CHENNAL

Wednesday, the 31st January, 2007

PRESENT : K. JAYARAMAN, Presiding Officer tindustrial Despute No. 183/2004

[Principal] abour Court CGID No.282/99]

(In the matter of the dispute for adjudication under clause (d) of sub-section (I) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of State Bank of India and their workman).

RETWEEN

Sri P. Rajendran (deceased) ; I Party/Petitioner

AND

The Assistant General

II Party/Management

Manager,

State Bank of India, Region-1, Trichy.

APPEARANCE:

For the Petitioner

 Sri V.S. Ekambaram, Authorised Representative.

For the Madagement

M/s. K. S. Sundar, Advocates

AWARD

The Central Government, Ministry of Labour vide Order No.1-12012/564/98-IR(B-1) dated 26-4-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court. Chemia and the said Labour Court has taken the dispute on its file as CGID No. 282/99 and issued notices to both parties. But the petitioner has not filed the Claim Statethent before the Tamil Nadu Principal Labour Court. After the constitution of this CGIT-cum-Labour Court the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as ID No. 183/2004 and notices were issued to both parties and both parties entered appearance and filed their Claim Statement and Counter Statement respectively.

The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Shri P.S. Rajendran, wait list No. for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3 The allegations of the Petitioner in the Claim Statement are briefly as follows:

The Petitioner was sponsored by Employment Exchange for the post of sub-staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject-matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. \$42/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India. State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely

A. B and C. Though the classification was unreasonable. the Respondent/Bank brought at the storice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed formal through Branch Manager of the branch. He was called for an interview by a Committee appointed. by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he mittally worked as a class IV. employee. The Petitioner has been working as a temporary. messenger and some times performing work in other branches also. While working on remporary basis, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service. during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner. orally on 31-3-97 that his services are not required any more and he need not aftered the diffice from 1-4-97. Hence, the Petitioner raised a dispute with regard to his nonemployment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication.

As against this, the Respondent in its Counter Statement alleged that reference made by the Govt, for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, he quesition of regular appointment/absorption does not arise. The engagement of Perimoner was not authorised. The Printioner is emopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I.D. Act in Ireu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with alterior motive. The Petitioner concealed the material (acts. that he was wait fisled as per his length of engagement and could not be absorbed as he was positioned down in semority. Due to the business exigency, the Respondent/ Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Hank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-07-88, 07-10-88, 9-1-91 and 30-7-96. The said. settlements became subject-matter of concitiation proceedings and minutes were drawn under section 18(3). of I.D. Act. In terms thereof, the Petitioner was considered. for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wan listed as condidate. No. 638 in waidist. of Zonal Office, Trichy, So far 212 wait listed temporary candidates, out of 652 waitlisted temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to

selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate emporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per Clause 7. the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The Politioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 652 wait listed candidates, 212 temporary etaployees were appointed and since the Petitioner was want fasted at 638 he was not appointed. The said settlements were bunafide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said sentements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to emertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the wait list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chemai wait list of daily wages was not finalized and beace not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

- 5. In the additional claim statement, the Petitioner contended that he was baving been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Politicaler prays that an award may be passed in his favour-
 - 6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P. No 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.
 - 7. In these circumstances, the points for my consideration are:
 - (i) "Whether the demand of the Petitioner in Wait List No. for restoring the wait hist of temporary messengers in the Respondent/ Bank and consequential appointment thereupon as temporary messenger is justified?"
 - (ii) "To what relief the Petitioner is entitled?"

Point Nos. 1 & 2:-

8. When the matter was pending before this Tribunal at the time of evidence, it is reported that the Petitioner died and it is posted for taking steps. But, the LRs of the Petitioner have not taken any steps to implead them as LRs in this dispute from 6-12-2004. They have also not filed my memo stating when the Petitioner died or what steps they have taken to implead them in this dispute.

9. The reference made in this dispute is "Whether the demand of the workman for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified and for consequential appointment threon as temporary messenger. It is only a personal right claimed by the Petitioner and since it cannot be said that the LRs of the Peritioner have no personal right to claim employment in the Respondent/Management, I find even in the event of reference being answered in favour of the deceased Petitioner, this petition cannot be allowed. Therefore, I find the claim is abated and thus, it is dismossed blit without any costs.

Thus the reference is disposed of accordingly.

(Dictaled in the P.A., transcribed and typed by him corrected, and pronounced by me in the open court on this day the 33st January, 5007).

K. JAYARAMAN, Presiding Officer

नई दिल्ली: 19 जुलाई, 2007

का,आ. 2198,—और्स्नोंगंक विवस् अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट वैंक आंक होत्या के प्रबंधतंत्र के संबद्ध नियोजकों और उसके कर्मकारों के बीच, अनुबंध में निर्देष्ट और्योगिक विवाद में केन्द्रीय सरकार और्योगिक अधिकरण, चेन्सई के पंचाद (संदर्भ संख्या 121/2004) को प्रकाशित करती हैं, बो केन्द्रीय सरकार को 19-7-2007 को प्राप्त हुआ था।

> [२६ एल-12012/249/98-आई आर (ची-1)] अबय कुमर, डेस्क अधिकारी

New Delfu, the 19th July, 2007.

S.O. 2198.— In pursuance of Section 17 of the Industrial Disputes Act. 1947 (14 of 1947), the Central Covernment (icreby publishes the Award (Ref. No. 121/2004) of the Central Gove. Industrial Tribunal - cum-Labour. Chennal as shown in the Annexure in the Industrial Dispute between the Management of State Bank of Indua and their workman, received by the Central Government on 1947-2007.

[No.1-12012/249/98-IR (B-T)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAL

Wednesday, the 31st January, 2007

PRESENT: K. JAYARAMAN, Presiding Officer INDUSTRIAL DISPUTE No. 121/2004

(Principal Labour Court CGID No. 14)/99j

(In the matter of the dispute for adjudication under clause (ii) of sub-section (I) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of State Bank of India and their workmen).

BETWEEN

S. A/puthasamy (deceased) : 1 Party/Petitioner

 ΛND

The Assistant General

If Party/Management

Manager.

State Bank of India. Region 1, Trichy.

APPEARANCE:

For the Petitioner

. Still V.S. Dkambaram.

Authorised Representative.

For the Management

: M/s M.S. SundarAnandan,

Advincates

AWARD

The Central Government, Monistry of Labour vide Order No.L-12017/249/98 Bc(B-1) dated 08 02-1999 ha referred this dispute earlier to the Tamil Nadu Principal Labour Court. Chemiai and the said Labour Court has taken the dispute on its rile as CCII) No. 111/99 and issued notices to both parties. But, the Petitionier has not filled the Claim Statement before the Tamil Nadu Principal Labour Court. After the emistation of this CGIT-Cum-Labour Court, the said dispute has been transfered to this Tribunal for adjudication and this Tribunal has numbered it as L1) No. 121/2004 and notices were issued to both parties and both parties entered appearance and filled their Claim Statement and Counter Statement respectively.

The Soliedale mentioned in that order is as follows:-

"Whether the demand of the workman Shri S. Arputhasamy, wait list No. 367 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, in what relief the said workman is entitled?"

- 3. When the matter was taken up for hearing, it is reported by the representative of the Petitioner that the Petitioner died on 20-11-04 and hied a petition to implead legal beins of the decease. Pentioner, Since I have given a finding in the LR perition viae LA, order No. 211/2005 dated. 2nd November, 2005, that LRs application is not maintainable and since no orders were obtained from higher forum, I find the claim is abatic, and the Petition is dismissed without any costs.
 - 4. Thus the reference is disposed of accordingly.

(Dictated to-the C.A., transactions said typed by him, corrected and pronounced by the in the typen count on this day the 21st January, 2007).

K. JAYARAMAN, Presiding Officer

नई दिल्ली, 19 **जुलाई**, 2007

क्न.आ. 2199.— औद्योगिक विवास अधिनियम, 1947 (1947) का (4) की घारा 1? के अनुसरण में, केन्द्रीय मरकार, स्टेट बैंक ऑफ इण्डिया को प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों को बरेच, अनुबंध में निर्दिष्ट औद्योगिक क्लियर में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 235/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को .9~7-2007 को प्राप्त हुआ था।

। सं. एल ।2012/465/98-आईआर(बी-1)] अवय कुमर, डैरक अधिकारी

New Dethi, the 19th July, 2007

5.O. 2199.—In pursuance of Section 17 of the Industrial Disputes Act. 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 235/2004) of the Central Government, Industrial Tribunal-con-Labour Court, Chennar as shown in the Amexice in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 19-7-2007.

[No.L-12012/465/98-IR (B-I)] AJAY KUMAR, Desk Officer

ANNEXURE

REFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007 PRESENT:

Shri K. JAYARAMAN, Presiding Officer Industrial Dispute No. 235/2004 (Principal Labour Court CGID No. 162/99)

(In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sti. K. Ramachandran

; 1 Pany/Petitioner

AND

The Assistant General Manager,: If Party/Management State Bank of India.

Z. O. Chennai.

APPEARANCE

For the Petitioner

: Sri V. S. Ekambarant.

For the Management

Authorised Representative

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 M/s, K.S. Sundar, Advocates

AWARD

The Ceptral Government Ministry of Labour, vide Order No. L-12012/465/98-IR (B-i) dated 12-2-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chemiai and the said Labour Court has taken the dispute on its file as COID No. 162/99 and issued notices. to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT cum labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as 1. D. No. 235/2004.

The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Shri X. Ramachandran, wait list No. 603 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

 The allegations of the Petitioner in the Claim Statement are briefly as follows:—

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and be was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Janapanchatiram branch from 24-10-83. The Petitioner was orally informed that his services were no more required. The pon-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court, The Respondent/ Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Janapunchatiram branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worker) as a class IV employee. From 24-10-83, the Petitioner has been working as a temporary messenger and sometimes performing work in other branches also. While working on temporary basis in Janapanchatiram branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner urally on 31/3-1997 that his services are not required any more and he need not attend the office from 1-4-1997. Hence, the Petitioner raised a dispute with regard

to his not employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Government to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularism him in service in due course. The Respondent/ Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank. it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him. after bueryiew do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Responders/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G & 25H of the LD. Act. The terminotion of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks abbut three categories only a single wait list has heen prepared and the Respondent/Bank has been regularisiting according to their whims and fancies. The Responden/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the reciporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed dame or by both which amounts to unfair labour practice. The waithist suffers serious informities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Positioner prays to grant relief of regular entployment in Respondent/Bank with all attendant benefits.

 As against this, the Respondent in its Counter. Statementalleged that reference made by the Government for adjustication by this Tribunal itself is not maintainable. The Petitibner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estupped from making claim as per Claim Statement, The settlement drawn under provisions of Section 18(1) and 18(3) of LD. Act in lieu of provisions of law, retreighment and implemented by Respondent Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Peritioner concealed the material facts that he was waitlisted as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/ Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and

when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated. 17-11-1987, 16-7-1988, 7-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3). of I.D. Act. In terms thereof, the Petitioner was considered. for permanent appointment as per his eligibility along with Similarly placed other temporary employees and the Petitioner was want listed as candidate No. 603 in wait list of Zonal Office, Channai. So far 357 wait fisted temporary. candidates, out of 744 waitlisted temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as perretrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject. 10 Other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category(B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar. months and under category(C) the temporary employees. who have completed 30 days aggregate temporary servace. in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the waitlist and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Peritioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facils that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 603 he was not appointed. The said settlements. were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said sortlements were not questioned by any union so far and the settlements. of bank level settlements and operated throughout the country. The Tamil Nada Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981. does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct in say that documents and identity of Petitioner was verified.

before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31:12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

- In the arithtional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set our by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate carire of the Respondent/Brock continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.
- 6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per rescribing rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P. No. 7872 of 1991, the Petitioner onestioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.
- 7. In these circumstances, the points for my consideration are:
 - (i) "Whether the demand of the Petitioner in Wait List No. 603 for restoring the wait list of temporary messengers in the Respondent/ Bank and consequential appointment

- thereupon as temporary messenger is justified?"
- (ii) "To what relief the Petitioner is entitled?"

Point No. 1:

- 8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate carire on temporary basis. After engaging them intermittently for some years. the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civit) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final bearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31.3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they , further prayed for minstatement with back wages and other attendant benefits.
 - On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars. issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in my case, the Petitioner is not bound by settlement under section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the J.D. Act and it is preposterous to contend that the

Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retrenched messangers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the LD. Act providing for retrenchment is not enacted only for the beachi of the workmen to whom Section 25F applies but for all lauses of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one extegory of retremened workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2.W3and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the seulements on absorption and which are statutory in character. Further, a combined study of Ex.MI and the averments of MWI and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Lix. M. deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A. B & C' is quite apposed to the doctrine of 'last come.— first go' or first come—last go' and therefore, the categorization in Clause | is illegal. Clause 1 (a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/cusual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to \$6 messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters. copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circulostances, the absorption of casuats along with the eligible categories is not valid. Therefore, those persons who were kngaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructional in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alteged to have **prepared only one** wait list for each module as per $E_{X}M10$. in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW lis unable to say as to when the wait first Ex.M10. was preparted, but it is mentioned in Ex.M10 that it was prepared hated on the settlement dated 17-11-87, 27-10-88and 9-1-91 which are marked as Ex.Ml, M3 and M4 respectively. But, when MWI has spoken about the

settlements, he depoised that settlement dated 27-10-88 was nor included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under ${
m Ly}(M10)$ was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble Bigh Court has held in its order dated 23-7, 99. in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that it is clear that the 1987 settlement was expressed with the temporary class IV employees who Were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with ontly wager in Class IV category who were paid wages daily on mutual agreement basis. In such direumstances, is rightly contended the Respondent are not justified and combined the list of candidates covered. ender 1987 serbentent and 1988 serdentent smoothey formed. two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article (4 of Constitution of India 1 Further, the avertient of MWC and the statements in Counter Statement are contrary to the above and it is nothing but a desperate arrempt to wriggle our the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Peritioner that as per deposition of MW1 want list under Ex.M10 companies of both messengerial and nonmessengerit candidates. While the temporary employees. were appointed after due process of selection and were paid wages on the heavy of andustry wise settlement, it is not so in the case of curvals. Interefore, both belongs to two different and civing categories. But, Ex. M3 psovues. for the same counts to the capitals as in the case of temporary employees at me matter or absorption. Therefore, it is violative of Amicle [4 & 16 of Constitution] of India. Theretore, the Perittoner coatended that preparation of Ex.M 1 namely wall but is not inconformity with the instructions of Ex M2 and non-preparation of Separate panels amounts to violation of circular, Secondly, it has not been prepared as per instructions in Ex. W2. circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released / published even after the Court order in WMP No. 14932/91. in W.P. No.7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1.8.88, Furthermore, walt live under Ex. M10 does not carry. particulars about the canthdates date of initial appointment. and the number of days put in by them to arrive at their respective sensority. From all these things, it is clear that Fix. M10 has been prepared in violation of instructions and ceased to have the creatbacty attached to the want rist. Above 40. Bx MI was not produced at the time of conciliation proceedings held during the year 1997-98 held. at Cheonal and Modurol and only during the year 2003 the Respondent/Bank produced the wair list Ex. M10 before this Tribunal marking it as a conflidential document. It is further contended on behalf of the Petitioner that though

the Respondent/Bank has alleged that these petition see were engaged in leave vacancy, they have not been $\operatorname{told} z$: the time of initial appointment that their appointment was in leave vacuacy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (oo) of the LD. Act, 1947. Though the Petitioner's work in the Respondent/ Bank is continueds and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as "budlies" casuals or comporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent, workmen is illegal." Learned representative further contended that Fix. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(c) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/ future vacancy anywhere in module or circle and in case, a condidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document show how he has arrived at the seniority and till date, it is a mysicry as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MWT. Therefore, the termination of the Petitioner who was in regular service of the Respondent/ Bank is arbitrary, male fide and illegal and the Respondent/ Bank has not acted in accordance with the terms of sextement on absorption of temporary employees. Though the Respondent/Rank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9 6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) scrttement as claimed by the Respondent/Bank which says. only with regard to modification of Ex. MI to M4 made in terms of Ex. M6. Though the Respondent/Bank produced En M7 and M11 interim orders passed by High Court of Madras in WMP No.11932/91 in W.P. No.7872/91 ccased to make any relevance when the main with has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner, Further, though the Respondent/Management has examined two witnesses, the

deposition of management a toesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M I to M5. Above all, though the Respondent Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence avidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months. as enshrined under Section 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service in illegal and against the mandatory provisions of Section 😂 and therefore, they are deemed to be in continuous service. of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected LDs have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays às days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 Ω LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with harmner, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the hank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of west lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar mouths and they are in age group of 40 to 50 years and for no fault. of thems, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

(i) But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and

their engagement was not authorised. Purther, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Section 18(1) and 18(3) of the LD. Act, in lieu of the provisions of law and implemented by the Respondent/ Bank and the claim of the Petitioners are not bonafide and are made with ofterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as perength of hit engagement and could not be absorbed as he was positiohed down in the seniority. The Respondent/ Bank was edgaging temporary employees due to business. exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked ak temporary messenger is viso incorract, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were herrafide which were the only workable solution and is binding on the Peritioner. The Petitioner accepted the settlement said accordingly he was wait listed and therefore, the Petitional is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate (proughout the country, Further, he relied on the folings reported in 1991 I LLI 323 ASSOCIATED GLASS INDÚSTRILIS LITO, VA INDUSTRIAL TRIBUNAL A.P. AND (JIMERS wherein under Section 12(3) the union. entered into a settlement with the management settling the claim of 11 workings and the workings resigned from the job and received terminal benefits, but the workmen reised a plea before the Tribunal that they did not resign valuntarily But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud. misrepresentative, or energian, the settlement is binding on the workthen." Learned counsel for the Respondent forther referd on the rulings reported in 1997 $\Pi 11.01189$ ASHOK AMD OTHERS VA MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Books of the Bombay High Court has held that "therefore a kontement arrived at in the course of the conciliation proceedings with a recognised majority union wil: be bindisk on all workmen of the establishment, even those who believe to the minority union which had objected to the same. To that extent, it departs from the ordinary law of chatracts, the object abviously is to uphold the sanctity of sentements reached with the active assistance of the concitiation officer and to discourage an individual employee or a minority union from southing the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 ! LLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein he Supreme

Court has betd that "settlements are divided into two categories namely (i) those arrived at outside the conciliation. proceedings under Section 18(1) of the LD. Act and (n) those arrived at in the course of conciliation proceedings. under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the telllement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 466 NATIONAL ENGINEERING INDUSTRIES LID. Va. STATE OF RATASTHAN AND OTHERS wherein the Supreme Court has held that "sortlement is arrived at by the tree will of the parties and is a pointer to there being good will hetween them. When these is a dispute that the sestlement is not hourafide in nature or that it has been arrived at on account of fraud. misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govemay refer for adjudication after examining the atlegations as there is an underlying assumption that the autilement reached with the help of the conciliarion officer must be fair and reasonable "Relying or all these risk spices, learned counsel for the Respondent controlled that though it is allaged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them. they have entered sixe settlement with the bank and therefore, it is binding on the Pentitorer, Puriber, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not briding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent Turther contended that though the reference made in this case and other connected disputes is "whether the demand of the workman with wair list No. given for restoring the wair first of temporary messengers in the establishment of Respondent/Hank and consequential appointment thereupon as temporary messenger is justified?" The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full hack wages are Hence, the Petitioner's contention against the reference made by the Govt, is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as affeged by the Petitioner in the Claim Statement.

12. But, as against stis on behalf of the Petitioner it is contended that more wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY.

KOLLAM BILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find our some rechnical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further beld that "the Tribunal should look into the pleading and find out the exact mature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Peritioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAG NATHAN ORJENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS, wherein the Madhya Pradesh High Count has hold that "the Tribunal cannot go behind the terms of reference. but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reterence in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look, into the pleadings of the Petitioners. and can decide whether the Petitioner is entitled to be reinstated in service as afleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribural is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it

is not questioned by any of the unions of the Respondent/ Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner inentioned that be has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V.VIJEESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Government service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of **bottom** persons were removed from the select list and the remaining selectees, were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such direumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the passel was prepared and the fact that it was a yearty panel expiring on 6-2-98, we are of the opinion. that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidate, included in ment list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, tearned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with malafide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF

HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad-hoc temporary employees. who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc/ temporary froployee who has been continued for one year. should be pegularised even though: (a) no vacancy is available for him which means creation of a vacancy; (b) he was not spensored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by as in para 12 which would arise from giving of such blanker orders. None of the decisions relied upon by the High Court justify such wholesale. unconditional orders. Moreover, from the mere continuation of an ad-had employee for one year, it espect be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of humb in such matters. Conditions and direumstances of one unit may not be the same as of the other. Just because in one case a direction was given to regularise employees. who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must fellow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical aut but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Counts. He further relied on the decision reported in 1997 ILSCC | ASHWANI KUMAR AND OTHERS V2. STATE OF BIHAR AND OTHERS wherein the Full Beach of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees!whose entry itself was illegal and yord is concerned, it is to be noted that question of confirmation or regularigation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc busis against an available vacancy which is already sauctioned. But, if the initial entry isself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a riph-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a

nullity." Therefore, learned counsel for the Respondentcontended that these temporary employees were appointed. only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave. vacancies and therefore, they are not entirled to claim any absorption in the Respondent/Bank. Further, he relied on the rutings reported in AIR 1997 SCC 3657 HIMANSHL. KUMAR VIDYARTHI & ORS VE STATE OF BIHAR. AND ORS, wherein the Supreme Court has held that "they are temporary employees working on dady wages. Under these direumstances, their disengagement from service. connot be construed to be a retrenchment under the LD. Act. The concept of retrendiment therefore, cannot be stretched to such an extent as to power these employees. Since they are only daily wage couplayees and have no right to the posts, their disengagement is not arbitrary." He durther relied on the radings reported in 1994-3 LL! (Supp) 754 wherevolue Rajasthan High Court has held that "Under Section 25G of the 1D. Act retranchment procedure following principle of his (come-first go) is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle. retreaching seniors and retaining juniors. Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his junious were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more (lays than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Perisioner and, therefore, the claim is to be dismissed with costs.

 Learned Senior Advocate turther argued that given in recent decision reported in 2006.4 SCC. I Secretary, State of Kamataka Vs. Uma Dovi, the Nopreme Court has held that metally because a temporary employee or a casual wage. worker is continued for a time beyond the term of his appointment, he would not be confilled to be absorbed in regular service or made permanent merely on the strength. of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules, it is not open to the Court to prevent regular recruitment at the instance of temporary employees. whose period of employment has come to an end or of adhose employees who by the very nature of their appointment, do not apquire any right." Funder, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities. and to take the view that a person who has temporarily or

casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "funless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointed...... It has to be clarified that merely because a temporary employee or a casual wage worker is continued. for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made. permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Purther, in CDJ 2006 SC 443 National Fertilizers Ltd. and Others Vs. Somvir Singh, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nulliry, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURENDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Article 14 and 16. of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION V_4 S.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon. him to be regularised in service. " The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

Relying on all these decisions, learned counsel. for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities. was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either

the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner

- 17. I find much force in the contention of the learned. counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the septement our the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or . other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent /Bank.
- 18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are cutilled for the same relief.
- 19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not emitted to claim regularisation or reinstanement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2:

The next point to be decided in this case is to what relief the Petitioner is entitled?

- 20. In view of my foregoing flodings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work. I find the Petitioner is not entitled to any relief as claimed by him. No Costs.
 - Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007).

K. JAYARAMAN. Presiding Officer.

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	esses Filan		W17	17-3-97	Xerox copy of the Service particulars.
For the Petitioner WW1 Sri K. Ramachandran WW2 Sri V, S. Ekambaram					J. Velmunigan
For the Respondent MW (Sri C. Mariappan MW2Sri C, Ramatingam			Wig	26-3 9 7	Xerox copy of the letter advising selection of part time Menial G. Pandi
Documents Marked ;			W19	31-3-97	Xerox copy of the appointment order to Sn G. Pandi
W ₁	1-2-88	Description Xerox copy of the paper publication in Saily Thanthi based on Ex. M1. Xerox copy of the administrative	W20	Feb. 2003	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle
wa	<u>3</u> 44-91	guidelines issued by Respondent/Hank for implementation of Ex. M1.	WZI	13-2-95	Xerox copy of the Madural Module Ciscular letter about engaging temporary
		Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.	W22	9-11-92	employees from the panel of wait list. Xerox copy of the Head Office Circular. No. 28 regarding norms for sanction of messenger staff.
W4 W3	1주의 20-08-91	Xerox copy of the adventisement in The Hindu on daily wages based on Ex. W4. Xerox copy of the advertisement in The	W23	9-7-92	Xerox copy of the minutes of the hiparrile meeting.
	:	Hindu extending period of qualifying service to daily wagers.	W24	9-7-92	Xerox copy of the settlement between Respondent/Bank and All India Staff
W6	15-3-97	Xerox copy of the circular letter of Zonal Office. Chemnal about filling up of vacancies of messenger posts.			Bank of India Staff Federation for implementation of norms creation of part time general attendants.
₩7	25/3.97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.	W25	7-2-06	Xexix copy of the Local Head Office Circular circular about conversion of part time employees and redesignate them as general attendants.
W8	Ma .!	Xerox copy of the instructions in Reference book on staff about casuals not to be engaged at office/branches to	W 26	31 12-85	Xerox copy of the local Head Office circular about appointment of temporary employees in subordinate cadre.
		vio messengeriał work.	Far O	e Responde	ent/Management :
W9	30 -5-96	Xerox copy of the service certificate issued by Janapachatram Branch.	Ex. N	o. Date	Description **
W10	9-2-98	Xerox copy of the service certificate	Ml	17:11.87	Xerox copy of the settlement.
5717.1	35 41 05	issued by Janapacharran branch.	M2		Xerrix cupy of the sentlement.
WH	25 ₁ 11-85	Xerox copy of the service certificate issued by Janapachatram branch.	М3	27-10-88	Xerox copy of the settlement.
W12	Ni	Xerox copy of the administrative	M4	09-01-91	Xerox copy of the settlement.
		guidelines in reference book on staff	MS	30-07-96	Xerox copy of the settlement.
		matters issued by Respondent/Bank regarding recruitment to subordinate cadre & service conditions.	Mβ	09406-95	Xerox copy of the minutes of conciliation proceedings.
W 13	Nij	Xerox copy of the Reference book on Staff matters Vol. III consolidated upto	М7	28-05-93	Xerox copy of the order in W.P. No 7872/91.
W]4	5-3-97	31 12-95. Xerox copy of the call letter from Madurui Zerox copy of the call letter from Madurui	Мв	15-(25-9R	Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa.
W15	- 6-3-97	zonal office for interview of messenger post—V. Muralikannan Xerox copy of tibe call letter from	M9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
		Maduisi gonal office for interview of messenger post- K. Subburaj	MIN	ИЛ	Xerox copy of the wait list of Chennai Module.
W16	5-3-97	Xerox copy of the call letter from Madural zonal office for interview of messenger post —J. Velmurugan	Mil	25-10-99	Kerox copy of the order passed in CMP No.16289 and 16290/99 in W.A. No. 1893/99.

नई दिस्सी, 19 जलाई, 2007

का.आ. 2200.—औखोंगक क्विट अधिनियम, 1947 (1947 का 14) की धरा 17 के अनुसरण में, केन्द्रीय सरकार, स्टेट बैंक ऑफ इंग्डिया के प्रवंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुसंध में निर्दिष्ट औद्योगिक क्वियर में केन्द्रीय सरकार, औखोंगिक अधिकरण/जम न्यायास्त्रय, चेग्नई के पंचाट (संदर्भ संख्या 244/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-7-2007 की ग्रीया हुआ था।

> [सं एल-12012/461/1998-आक्रिस(बी-I)] अजय कुमार, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2200.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 244/2004) of the Central Government, Industrial Tribunal-cum-Labour Court, Chemnai as shown in the Armexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 19-7-2007.

[No.1-12012461/1998-IR (B-I)] AJAY KUMAR, Desk Officer

ANNIOR BRE

BRFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

> Wednesday, the 31st January, 2007 PRESENT:

Shri K. JAYARAMAN, Presiding Officer Industrial Dispute No. 244/2004 (Principal Labour Court CGID No. 171/99)

(In the matter of the dispute for adjudiation under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Maanagement of State Bank of India and their workmen)

HETWEEN

Sri. R. Jayavelu

: I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management State Bank of India, Z. O. Chennai.

APPEARANCE

For the Petitioner

: Sri V. S. Ekambaram,

For the Management

Authorised Representative : M/s. K. Veeramani

AWARD

Advocates

 The Central Government Ministry of Labour, vide Order No. L-12012/461/98-IR (B-I) dated 12-2-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chemiai and the said Labour Court has taken the dispute on its file at COID No. 171/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT cum labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I. D. No. 244/2004.

2. The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Shri K. R. Jayavehi will list No. 452 for restaxing the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said westernm is conitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:—

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Thiruvallur Main stranch from 17-5-1984. The Petitioner was orally informed that his services were no more required. The non-sarployment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/ Bank, in addition to its counter, filed a copy of settlement under section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Thirtivation branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 17-5-1984, the Petitioner has been working as a temporary messenger and sometime performing work in other branches also. White working on temporary basis in Ambatter state brench, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be inservice during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not

required any more and he need not attend the office from 1-4-1999. Hence, the Petitioner raised a dispute with regard to his apa-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribuosi, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to angage him in service as obtained prior to 31-3-1997 and to regularise him miservice in due pourse. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 250 & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single walt list hus been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits ero. w the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Benk engaged the Petitioner and extracted the same week country by payment of petty cash or by directing him to work under assumed hame or by both which amounts to unfair lebour practice. The wait list suffers serious infirmities and Π is opt based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendani benefits.

4. As against this, the Respondent in its Counter Statement silleged that reference made by the Gevi, for adjudication by this Tribunal issett is not maintain $\delta \kappa$. The Petitiones was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I.D. Act in fieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bone fide and made with alterior modive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/ Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those

employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-07-1988,07-10-1988,9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under section 18(3) of 4.D. Act, in terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petit, oncr was wast listed as candidate No.720 in wait list of Zonal Office, Chennai, So far 357 wait listed temporary candidates, out of 744 wait listed temporary employees were permanently appointed by Respondent/Bank. It is folse to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacuraties as and when it arose. When the Petitioner baving submitted to selection process in terms of sertlements drawn as per retrenchment provisions referred to above. cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the seitlement, employees were categorised as A. B and C. Considering their temporary service and subject to other elagibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary (eavist) in any continuous block of 36 calendar months and order category (C) the temporary employees who have comparted 30 days againgate temporary service in any cafendar (per afro) 1-7-75 or mammum 70 days temporary service in any continuous block of 36. calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for scoldrify in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up varancies which were to arise upto 31/(3.1994). The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent variancies stand substantially reduced. There were no regular vacancies available. The poculiar problem was due to the facts that all the aforesaed temporary. employees were working in raive vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, but of 744 want have describbates, 357 temporary. employees were appointed and since the Perinoner was wait listed at 45 line was not appointed. The said settlements were bona fide which were the only workable solution and is bireding on the Petitioner. The Politioner is estepped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Figither, the said sentements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Temil Nado Industrial Establishment (Conferment of Permanent Status to Workman) Act, 1981. does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified.

before the Petitioner was engaged. It is also not corressly that the Petitioner was discharging the work or permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Parther, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

- In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Peutioner has fulfilled the criteria secont by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bunk continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services. of the Petitioner as he has acquired the valuable right ensurined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that anger no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.
- 6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner, Hence, the Petitioner prays that an award may be passed in his favour.
- 7. In these circumstances, the points for my consideration are :
 - (i) "Whether the demand of the Petkioner in Walt List No. 452 for restoring the wait list of temporary messengers in the Respondent/ Bank and consequential appointment

ther upon as temporary measurger is justified?"

(ii) "To what relief the Petitioner is entitled?"

Point No. 1:

- 8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terros of the relevant guidelines/circulars of the Respondent/Bank In permanent vacancies in subordinate carire on temp-mary basis. After engaging them intermittently for some years, the Petitionet in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Wrn Permon before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition. No. 542 (Civil) 1987, the Respondent/Bank hurrindly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Count at the time of final bearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as fix. MI. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have caised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as onjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.
- On behalf of the Petitioner, it is contended that these Petitioners were recruited as temperary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary carployers and any settlement in this regard is redundant and in any case, the Petitioner is not bound by sculement under Section 18(1) concred into between the alleged Pederation and the Respondent/Management. They further correspond that though the Respondent/Bank has stated that the Peditioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Purther, they have invoked the relevant provisions of Chapter V A of the I.D. Act and it is preposterous to contend that the

Petitioner; has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL; BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has beld that Chapter V-A of the LD. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retreochment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable fight for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2. W3 and WS as well as Ex. MS which constitute/relate to like circular instructions of the Respondent/Hank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.MI and the averments of MW I and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw chal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C1 is quite opposed to the doctrine of "tast come—first go' or 'first come-tast go' and therefore, the categorization in Clause 1 it illegal. Clause 1 (a) of Ex.M1 provides an ope-vituality to persons who were engaged on casual basis. and altowed to work in leave/casual vacancies of messengers, farashes, cash exolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines indutioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Ruther, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible calegories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual hasis should dos be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have proposed only one wait list for each machile as per Ex.M (0) in this case. Those curcletures under Ex. M10 were found suitable for appointment as measurages and sweepers. Even MW 1 is despite to say as to when the wait list Ex.M10. was prepared, but it is recasioned in Ex.M10 that it was prepared besidnes the systement dated 17-11-87, 27-10-88 and 9-1-91 which are marked so Ex.Mi, M3 and M4 respectively. But, when MWI has spoken about the settlements, he disposed that spiniument dated 27-10-88~was

out included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex.M10 was prepared on 2.5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 to W.P.No. 7872 of 1991, which is marked as an exhibit, to which it is stated that fit is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement deaft with daily wager in Class IV category who were paid wages dail / on mutual agreement basis. In such discumstances, as rightly contended the Respondent are not justified and combined the list of candidates envered under 1987 settlement and 1988 settlement since deep formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India. Further, the preciment of MWI and the statements in Counter statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or respectated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 want tist under Ex.M10 comprises of both messengerial and nonmessengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the hasis of industry-wise septement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 & 16 of Constitution of India. Therefore, the Petitinner contended that preparation of Ex.M 10 namely wait list is not mounformity with the instructions of Ex.M1 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Fx W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/ published even after the Court order in WMP No.11932/91 in W.P. No.7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published to The Hundu dated 1-8-88. Furthermore, wait list under 1/x, M10 does not carry particulars about the condidates date of initial appointment and the number of days put in by them to arrive at their respective semority. From all these things, it is clear that $E_{\rm X}$. M 10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chemiai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been fold at

the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device. to take them out of the principal clause 2 (oo) of the LD. Act, 1947. Though the Petitioner's work in the Respondent/ Bank is combined and though the Petitioner has performed. the duties coptinuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SOC 201 H.D. SINGHUY, RESERVEBANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ wortmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense. since the selected candidates with longest service should have priority over those who joined the service letter and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy. anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, male fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central). Hydershad, it is reither a 18(3) sentement por 12(3) scallement as claimed by the Respondent/Bank which says only with regard to modification of Ex. MI to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP. No.11932/91 in W.P. No.7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner, Further, though the Respondent/ Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M! to M5.

Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference pariod and beace evidence of Respondent/ Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under section 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the bratefits. under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they bave also completed 240 days in a period of 12 calendar. months. He also relied on the rulings reported in 1985 Π LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression 'actually worked under the employer' cannot mean that those days. only when the workmen worked with harmour, sickle or penbut most necessarily comprehend all those days during which they were in the employment of the employer and for which be had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc." It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1990's but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days. and more in a continuous period of 12 calendar months and they are in ago group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Section 18(1) and 18(3) of the LD. Act, in tieu of the

provisions of law and implemented by the Respondent/ Bank and the claim of the Petitioners are not bonafide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/ Bank was edgaging temporary employees due to business. exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they. were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the sentement and accordingly he was want listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 LLL 1323 ASSOCIATED QUASS. INDUSTRIES LTD. V. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is viriated by froud, nucrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rotings reported in 1997 H LLJ 2189. ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Beach of the Bombay High Court has held that "therefore d settlement arrived at in the course of the conciliation proceedings with a recognised majority unson will beibinding on all workmen of the establishment, even those who belong to the minority union which had objected to five same. To that extent, it departs from the ordinary lawlof contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage un individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud of even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration " Learned counsel for the Respondent further relied on the rulings reported in 1997 LLLJ 308 K.C.P. LTD. V_X PRESIDING OFFICER AND OTHERS wherein the Supreme Lour, has held that "settlements are divuled into two categories namely (i) those arrived at outside the conciliation proceedings under section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under section 18(3). A settlement

of the first category has limited application and hinds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the consesting workmen were members and if there was nothing unreasonable or unfair in the terms of the sentement, it must be hinding on the contening workmen also." He further relied on the, rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING IND CATRIES LTD, Vs. STATE OF RAIAS THAN AND OTHER Recin the Supreme Court has held that "settlement is arrived a: by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bong fide in nature or that is has be**e**n arrived at on account of fraud, misrepresentation or conceolment of facis or even corruption and othe inducements, it could be subject matter of yet anoth; industrial dispute v hich an appropriate Gove, may refe. for adjudication after examining the allogations as the . is an underlying assumption that the settlement reache with the help of the conclusion officer must be fair on reasonable." Relying on all those decisions, learner. counsel for the Respondent contended that though it it alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them. they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it eacher be said that it is not binding on them and he is estopped from (hyputing the

11. Leatned course! for the Respondent further contended that though the reference made in shis case and other connected disputes is "whether the demand of the workman with wait list No, given for restoring the wait list of temporary messengers or the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?" The Petitioner contended that the notrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reterence made by the Govt, is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not ministatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere working of reference is not decisive in the matter of tenability of a reference and he relied on the rubings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLAHOTEL AND SHOP WORKERS UNION Vs. ANDUSTRIAL TRIBUNAL. KOLLAM wherein the Kerala High Court has be diffind "mere working of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the

material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Peritioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998. LABIC 1664 VANSAGNATHAN ORIENT PAPER MILLS V3 INDUSTRIAL TRIBLINAL & ORS, wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied or the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN V_{δ} PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental morters also and the order of reference should not be construed in the manier which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view. a should consider the order of reference in a fair and reasonable manuer, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrendament is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/ Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance

- 13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.
- !4. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wair list has been exhausted, now the Petitioner cannot question that he

should be reinstated in service and he relied on the rulings. reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VIJEESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt, service in an existing or a future vacancy." In that case, printing of safect list on reduction in number of vacancies was made in view of the impending absorption of steam surplus spaff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectors were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS VA SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rollings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. V1 PIARASINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The threction in effect means that every ad-head temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available forhim which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was heappointed in pursuance of a notification calling for applications; which means he had entered by a back door. :(c) he was rint eligible and qualified for the post at the time. of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanker orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere--continuation of an *ad-hoc* employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance. extends to several years. Further, there can be no rule of humb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees. who have put in one year's service as far as possible and. subject to sulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and dircumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders. of lower Courts. He further relied on the decision reported m 1997 ILSCC 1 ASHWANI KUMAR AND OTHERS V_{8} . STATE OF BIHAR AND OTHERS wherein the Full Bench. of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation. or regularisation of an irregularly appointed candidate. would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent. on such a mon-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstanées, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." 'Therefore, learned counsel for the Respondent contended that these temporary employees were appointed. only due to exigencies and they have not appointed against any regular/vacancy and they have only appointed in leave. vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings (eported in AIR 1997 SEC 3657 HIMANSHU) KUMAR VIDYARTHI & ORS V& STATE OF BIHAR AND ORS, wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these

circumstances, their disongagement from service connot. be construed to be a retrenchment under the LD. Act. The concept of retrenchment therefore, curroot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts. their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the LD. Act retrenchment procedure following proviple of 'last come-first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors. Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence. that his juniors were made permanent by the Respondent/ Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with

Learned Senior Advocate further argued that even. in recent decision reported in 2006 4 SCC 1 Secretary, State of Kamataka Vs. Uma Devi, the Supreme Court has held. that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his. appointment, he would not be emitted to be absorbed in regular service or made permanent merely on the strength. of such continuance, if the original appointment was not made by following a due process of selection as envisaged. by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees. whose period of employment has come to an end or of adhoe employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "itis not as if, the person who accepts an engagement either. temporary or casual in nature is not aware of his employment. He accepts the employment with open cycs. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpenuate illegalities and to take the view that a person who has temporarily or casually got employed. should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment. which is not permissible." Further, the Supreme Court while: laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely onthe strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. Further, in CDJ 2006 SC 443 National Fertilizers Ltd. and Others Vs. Somvir Singh. wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 Municipal Council., Sujanpur Vs. Surinder Kumar, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its corployees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Article 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 Machya Pradesh State Agro Industries Development Corporation Vs. S.C. Pandey wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position. as poticed hereinbefore."

Relying on all these decisions, learned counsel. for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned. counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements emered into between the Respondent/Bank and Pederation: at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the

sculement and they have not alleged that settlement was not a bone fide in nature or it has been arrived at on account of male fide, misrepresentation, fraud or even contuption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has gut satectioned posts for temporary employees to be absorbed. I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Positioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not inticled to claim any rights for regularisation, mercly because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not equitien to claim regularisation or reinstatement in the Respondents' Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2:-

The next point to be decided in this case is to what relief the Peritioner is cutitled?

20. In view of my foregoing fundings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him. corrected and pronounced by me in the open court on this day the 31st January, 2007).

K. JAYARAMAN, Presiding Officer

Witnesses Executable -

For the Petitioner

WW1 Sri R. Jayavelu

WW25rlV,S.Ekemberwn

For the Respondent MW1 Sri C. Mariappan MW2 Sri C. Ramalingam

Documents Marked :---

Ex. No. Date

Description

Wl 1-8-88 Xerox copy of the paper publication in daily Thanthi based on Ex. M.I.

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W2	20,4-8		W			
W3	2 4 4-9 1		W	20 26 -3-9	 Xerox copy of the letter advising selection of part time Menial—G. Pandi. 	
		regarding absorption of daily wagers in measurager vacancies.	W 2	21 31-3-9		
W4 W5	1-4-91 20-8-91	Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4.	₩2	22 Feb. 20	005 Xerox copy of the pay alip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle.	
W6		Hindu extranding Period of qualifying service to daily wagers.	W2	3 13-2-9	5 Xerox copy of the Madurai Module Circular letter about Engaging temporary	
	15-8-97	Office, Chemic About filling up of vacancies of messenger posts.	W 2	4 9-11-93	No. 28 regarding norms for sanction of	
₩7	25- 1-9 7	Respondent/Bank to all Branches regarding identification of measurer	₩2:	\$ 9-7-92	messenger staff. Xerox copy of the minutes of the bipartipe meeting.	
V 3	NE :	Vacancies and filling them before 31-3-97. Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messangerial work.	₩2t	- 3732	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of part time general attendants.	
V9 V10	Nii : 9-7-∳6	Xeros copy of the service certificate issued by Thiruvallur Branch. Xerox copy of the service certificate	W27	7-2-06	Xerox copy of the Local Head Office circular about conversion of part time employees and redesignate them as	
/ 1)	47- 9 6	branch. Xerox copy of the service certificate	W28	31-12-8	Series copy of the Local Head Office about appointment of temporary	
		issued by Ambattur Industrial Estate branch.	Fort	he Remon	employees in subordinate cadre.	
112	16-4 <i>0</i> 7	Xerox copy of the service certificate		io. Date	Description	
	:	issued by Ambanur Industrial Estate branch.	M 1	17-11-87	Xerox copy of the settlement,	
13	1992 93	Xerox copy of the attendance register.	M2	16-7-88	Xerox copy of the settlement.	
]4	Nia i	Xerox copy of the administrative	M3	27-10-88	Xerox copy of the settlement.	
	,	procures in reference book on staff	M4	9-1-91	Xerox copy of the settlement,	
		matters issued by Raspondent/Bank regarding recruisment to subordinate	MS	30-7-96	Xerox copy of the settlement.	
15	NB !	Care and service conditions. Xerox copy of the Reference book on	M6	9-6-95	Xerox copy of the minutes of conciliation proceedings.	
		Staff matters Vol. III consolidated upto 31-12-95.	М7	28-5-91	Xerox copy of the order in W.P. No.7872/91,	
16	63-97	Xerox copy of the call letter from Macharal zonal office for interview of messenger	MB	15-5-98	Xerux copy of the order in O. P. No. 2787/97 of High Court of Orissa.	
7	6-3-97	post—V. Muralikannan. Xerox copy of the call latter from	MP	10-7-99	Xerox copy of the order of Supreme Court in SLP No., 3082/99.	
8 (madimu zonal office For interview of messenger post—K. Subbaruj.	Mio	NE	Xerox copy of the wait list of Cheunai Module,	
o (Xerox copy of the call letter from Madural Zonal office for interview of messenger post —J. Vehmuragan.	МП	25-10-99	Xerox copy of the order passed in CMP No.16289 and 16290/99 in W.A. No.1893/99.	

न्द्रं दिल्ली, 19 जुल्ह्यं, 2007

वह आ. 2201.—औद्योक्त विकार अविनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केवीन सरकार, स्टेट मैंक ऑफ इण्डिया के प्रकंशतंत्र के संबद्ध नियोक्तों और उनके कार्यकारों के बीच, अनुबंध में निर्देश्य औद्योगिक विवाद में खेडीय सरकार औद्योगिक अधिकरण, चेवां के पंचाट (धंदर्य संख्या 243/2004) को प्रकाशित करती है, वो केन्द्रीय सरकार को 20-7-2007 को प्रधा हुआ था।

[प्र. एल-12012/456/1998-आईआर(भी-I)] अभैन कुमार, हेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2201.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 243/2004) of the Central Government, Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workman, received by the Central Government on 19-7-2007.

[No. L-12012/456/1998-JR (8-1)] AJAY KUMAR, Deak Officer

ANNEXIEE

REPORE THE CENTRAL GOVERNMENT INDUSTRIAL TREBUNAL-CUM-LABOUR COURT, CHRONAI

> Wednesday, the 31st January, 2007 PRESENT

K. JAYARAMAN, Presiding Officer Industrial Dispute No. 243/2004

[Principal Labour Court CCID No. 17099]

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workman)

BETWEEN

Sri P. Selvan

: [Party/Petitioner

AND

The Assistant General Manager, State Bank of India, : D Party/Management

Z. O. Chennai.

APPEARANCE.

For the Petitioner

: Sri V. S. Ekamberam, Authorised Regresentative

For the Management

: M/s. K. Votramani, Advocates

AWARD

 The Central Government Ministry of Labour, vide Order No. L-12012/456/98-IR (B-I) dated 12-2-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chemni and the said Labour Court has taken the dispute on its file at COND No. 170/99 and issued notices to both parties. Both either entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this COT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as LD.No. 243/2004.

The Schedule mentioned in that order is as follows:

"Whenter the demand of the workman Shri P. Selvam, wait list No.607 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is cutified?"

The allegations of the Petitioner in the Claim Statement are briefly as follows:

The Pethioner was approximed by Employment Exchange for the post of sub-staff in Class IV cadre in State Bank of India and he was given approintment as messenger after an interview and medical exguination. He was appointed on temporary basis at Kalpakkam branch from 24-10-1979. The Petitioner was orally informed that his services were no more required. The non-comployment of the Petitioner and others because subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. This Respondent/ Bank, in addition to its county, filed a copy of settlement. under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied comployment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Kalpakkum branch. He was called for an interview by a Committee repointed by Respondent/Benk in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 30-5-1998, the Peritioner has been working as a temporary messenger and sometimes performing work in other branches also. While working on temporary basis in Chindutripet branch, sucher advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same pariod. While the Petitioner was working as such, the Manager of the branch informed the Peritioner ocally on 31-3-1997 that his services are not

required any more and he need not attend the office from 1-4-1997. Hence, the Peritioner raised a dispute with regard to his non-comployment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, he reference framed did not satisfy the grievance of the etitioner, he has made a fresh representation to Govt. to econsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as btained prior to 33-3-1997 and to regularise him in service due course. The Respondent/Bank took up an erreasonable stand that the service and the number of tays worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it ngaged the Peritioner only in temporary services after the attenuent. The Putitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondentifiant before the conciliation officer. Therefore, the Respondent's section in not absorbing him in regular service is unjust and illegal Further, the settlements are repusaunt to Section 25G & 25H of the LD. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepied and the Respondent/Bank bas been Regularising according to their whires and fancies. The Respondent Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temperary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing hims to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious informities and it is not based on strict seniority and without any rationale, Hence, for all these reasons the Patitioner grays to grant relief of regular employment in Respondent/Bank with all attendant behelis

 As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribural itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of régular appointment/absorption does out arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of LD. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not born fide and made with ulterior motive. The Petitioner concealed the material facts that he was whit fisted as per his length of engagement and could not be absorbed as he was positioned down to seniority. Dup to the business exigency, the Respondent/ Bank engaged the temporary employees for performance of duties as messenger and such engagements were

prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was expoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-7-88, 7-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under section 18(3). of 1.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait ilsted as candidate No.607 in wait list of Zonal Office, Chemean So far 357 wait fisted temporary candidates, out of 744 wait listed temporary employees were permanently appointed by Respondent/Bank, It is false to allege that the Peritioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it acose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenduncin provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A. B. and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees. who have completed 30 days aggregate temporary service. in any calendar year after 1-7-75 or minimum 70 days. aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to large in December, 1991 and the ent off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The poculiar problem was due to the facts that all the aforesaid temporary. employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid sertlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait tissed at 607 he was not appointed. The said settlements. were bong fide which were the only workable solution and is binding on the Peditioner. The Petitioner is estapped from questioning the settlements directly or indirectly and his Gaum is hable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level serticments and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has

no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

- In the additional claim statement, the Petitioner. contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria secour by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class [V. post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bunk is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait. listed workmen with alterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons. other than wait listed workmen according to their whims and funcies. Hence, the Petitioner prays that an award may be passed in his favour.
- 6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated that all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions faid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are constrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.
- 7. In these circumstances, the points for my consideration are:
 - "Whether the demand of the Petitioner in Wait List No. 607 for restoring the wait list of

temporary messengers in the Respondent/ Bank and consequential appointment thereupon as temporary messenger is justified?"

(ii) "To what relief the Petitioner is entitled?"Point No. 1:

- 8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners. in the connected industrial disputes have been aponabred. by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees. Union had filed a Writ Petition before the Supreme Court. to protect the legal and constitutional rights of the workmen. concerned and while the matter was pending in Writ Petition. No. 542 (Civil) of 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court. at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. Ml. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or potice denied as opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenctaneur as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.
- On behalf of the Petitioner, it is comended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and . any settlement in this regard is redundant and in any. case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they

have invoked the relevant provisions of Chapter VA of the LD. Act and it is preposterous to contend that the Petitionel has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retreached messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V.A of the LD. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenctied workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character, Further, a combined study of Ex. MI and the averments of MW11 and MW2 and their testimonies during the cross-examination will clearly abow how the bank has given a rawifical to the Petitioner from the beginning linking his fature with the settlements. Further, Clause I of Ex. MI deals with categorization of retreached temporary employees into 'A. B and C', but this categorization of 'A. B & C' is quite opposed to the doctrine of flast come — first go" or first chine—last go" and therefore, the categorization in Clause I is illegal. Clause I (a) of Ex. MI provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers. farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines rijentioned in Rufszence Book on Staff matters, copy of which is marked as Ex.W8. Purther, the appointment of daily wage basis for regular messengerial jobs etc. and strictly prohibited as per bank's circulars/ matructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given unbre beneficial treatment in the matter of attriving at qualifying service for interview and selection. Hut, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Purther, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M 10 in this case. Those candidates under Ex. M(0 were found suitable for appointment as messengers and sweepers. Even MW I is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based

on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. MI. M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called noninclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 semiement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages. daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987. settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averagent of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comparises of both messengerial and non-messengerial candidates While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, E_{X} , M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M 10 namely wait list is not inconformity with the instructions of Ex. M2 and nonpreparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as perinstructions in Ex. W2 circulat regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No.11932/91 in W.P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-28, Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. MIO has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list

Ex. M10 before this Tribunal marking it as a confidential. document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy. was used as a device to take them out of the principal clause 2 (oo) of the LD. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitionar relied on the ratings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as badlies casuals or temporaries and to continue them at such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned. representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service letter and therefore, the wait list under Ex. M10. which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in other violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/foture vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/ Bank is arbitrary, mala fide and illegal and the Respondent/ Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alloged to be a copy of minutes of conciliation proceedings dated. 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Flank which says only with regard to modification of Ex. MI to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No.11932/91 in W.P. No.7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any

bearing in the case of the Petitioner. Further, though the Respondent/Monagement has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months. as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25. and therefore, they are deemed to be in continuous service. of the Respondent/Bank and they are entitled to the benefits. under the provisions of LD. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected LDs have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar. months. He also relied on the rulings reported in 1985 JJ LLI 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression 'actually worked under the employer' cannot mean "that those days only when the workmen worked with hammer, sickle or penbut must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc." It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were denied further engagement on account of seulements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days. and more in a continuous period of 12 calendar months. and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes.

were not in continuous service. Hence, the question of regular approximent/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the LD. Act, in lieu of the provisions of law and implemented by the Respondent/ Bank and the claim of the Petitioners are not bons fide and are made with alterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of hid engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/ Rank was edgaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the Federation were bona fifte which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly be was wait histed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Purther, he relied on the rulings reported in 1991 I LLJ 323 ASSOCIATED CLASS INDUSTRIES LTD, V3. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the citizen of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of concillation is vitiated by fraud, misrepresentation or coercion, the sentement is binding on the workeen." Learned counsel for the Respondent further reflection the rulings reported in 1997 Π LL3 1189. ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be kinding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assurance of the conciliution officer and to discourage an individual employee or a minority union from scutting the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud orieven corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent

further relied on the rulings reported in 1997 I LLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under section 18(1) of the LD. Act and (ii) those arrived at in the course of conciliation proceedings under section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the culings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. $V_{\rm S}$ STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is preived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bong fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the Pederation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same,

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt, is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive

in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribumal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which be relied on the rulings reported in 1998. LABIC 1664 VANSAGNATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS, wherein the Madhya. Predesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR. COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR. 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retreached from the Respondent/ Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is emitted to be reinstated in service as alleged. by him and whether he is entitled to the back wages as aileged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief grayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into

between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

Then the learned counsel for the Resoundent. contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings. reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V.VIIEESH wherein the Supreme Court has held that "the only question which falls for determination." in this appeal is whether a candidate whose name appears. in the select list on the basis of competitive examination acquires a right of appointment in Govt, service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff. and a policy decision has been taken to reduce the another of vacancies and consequently, a certain number of bottom. persons were removed from the select list and the remaining schotees were given appointments according to their comparative merits. In which, the Supreme Court has held. that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank" informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Banch, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the ralings reported in 1991 3 SCC 47 SHANKARSAN DASH 🕬 UNION OF INDIA wherein the Supreme Court has hold. that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent. contended that since the Petitioner has no night to question. the wait list and since there is no mala fine on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide. motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF

HARYANA AND ORS, Vs. PLANASINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad-hoc temporary employees. who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc/ temporary employee who has been continued for one year. should be regularised even though (a) no vacancy is: available for him which means creation of a vacancy: (b) he was not spensored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means be had entered by a back door : (c) be was oot eligible and qualified for the post at the time. of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied. apon by the High Court justify such wholesale, unconditional orders. Moreover, from the merecontinuation of an ad-hac employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance. extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees. who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow: irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and pircumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsusuainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported. in 1997 II SCC I ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench. of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent. on such a con-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them. of to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a

multity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed. only due to exigencies and they have not appointed against. any regular vacancy and they have only appointed in leave. vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the ralings reported in ATR 1997 SCC 3657 HTMANSHU KUMAR VIDYARTHI & ORS V. STATE OF BIHAR AND ORS, wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the LD. Act. The concept of retreachment therefore, cannot be stretched to such an extent as to enver these employees. Since they are unly daily wage employees and have no right to the posts. their disengagement is not arbitrary." He, further relied on the rulings reported in 1994 5 LLI (Supp) 754 wherein the Rajasthan High Court has hold that "Thider Section 25G of the LD. Act retrenchment procedure following principle of last come-first golits nor mandarory bur only directory, on i sufficient grounds shown, the employer is permitted to depart from the said principle repenching seniors and retaining juniors. Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence. that his juniors were made permanent by the Respondent/ Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Pentioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with

Learned Schlor Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKAVS, UMA DEVI, the Supreme Court has held that merely because a temporary. employee or a casual wage worker is continued for a time. beyond the term of his appointment, he would not be cutitled to be absorbed in regular service or made permanent. merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant irules. It is not open to the Court to prevent regular retruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temperary or casuat in nature. is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not ina position to bergain not at arms length since he might. have been searching for some employment so as to eke out. his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities. and to take the view that a person who has temporarily or casually got employed should be directed to be continued.

permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that, "unless the appointment is in terms of the relevant. rules and after a proper competition among qualified. persons, the same would not confer any right on the appointee...... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made. permanent merely on the strength of such continuance, if the original appointment was not made by following a due: process of selection as envisaged by relevant rules. Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINCH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a pullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006. SC 395 MUNICIPAL COUNCIL, SUIANPUR Va. SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshriped under Article 14 and 16. of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days. of service by that itself, would not confer any logal right. upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard. to the changes in the policy decisions of the Government. in the waite of prevailing market economy, globalisation, privatisation and outsometing is evident, in view of the settled legal position, as noticed hereinbefore."

Relying on all these decisions, learned counsel. for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the seattements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

- I find much force in the contention of the learned. counsel the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard. to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement. and they have not alleged that settlement was not a bona. fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even committion or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot. claim for reinstatement or regularisation in services of the Respondent /Bank.
- 18. Further, the representative for the Petitioner comended that in a similar cases, this Tribunal had ordered for reinstallment with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.
- 19. But, I find since the Supreme Court has held that temporary employees are not intitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/ Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2:

The pext point to be decided in this case is to what relief the Petitioner is entitled?

- 20. In view of my foregoing findings that the Petitioner is a temporary employee and be is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.
 - Thus, the reference is answered accordingly.
- (Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007).
 - K. JAYARAMAN, Presiding Officer

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Witte	эсез Едац	ined:—	W16	6-3-97	Xerox copy of the call letter from Madurai
For the	e Petitione	r WW1 Sri P. Selvaru WW2 Sri V. S. Ekambacam			20nal office for interview of messenger post — J. Vehmangan.
িল ‡	e Kesponé	ear MW1 Sri C, Mariappan MW2 Sri C, Ramalingen	W17	17-3-97	Xerex copy of the service particulars J. Velmuragan.
	nents Mari Lúsic		₩18	26 3.97	Xerox copy of the letter advising selection of part time Menial—G. Pandi.
WI	1-8-58	Description Xerox copy of the paper publication in daily Thanthi hased on Ex. M3	W19	31 3-97	Xerox copy of the appointment order to Sri G. Pandi
W 2	20-4-AB	Xerox copy of the administrative gardelines issued by Respondent/Bank for implementation of Ex. M1.	W20	Feb. 2005	Xerox copy of the pay slip of T. Sekar for the court of February, 2005 wait list No. 395 of Madurai Circle.
₩3	24-4491	Xerox, copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in	W21	13-02-95	Xerox copy of the Madurai Module Circular letter about Fagaging temporary copployees from the panel of wait list
W4	1554	Massenger vacancies. Xerox copy of the advertisement in The	W <u>22</u>	09-11-93	Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff.
ws	20-8-41	Hindu on daily wages based on Ex. W.4. Xerox copy of the advertisement in The Hindu extending Period of qualifying	W 23	09407-92	Xerox copy of the minutes of the Bipartite maeting
W6	15-34h	Service to daily wagers. Xeron copy of the circular letter of Zonal Office, Chennai about filling up of	W24	09-07-92	Xeiox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms creation of part
W 7	25-3-97	vacancies of messenger posts. Xeros copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before	W25	07-02-06	time general attendants. Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as general anendants.
ВW	Nī]	31-3-97. Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to	W756	31-12-85	Xerox copy of the local Head Office circula: about Appointment of Respicacy employees in subordinate calls:
		do messengerali work.	For th	ne Responselo	nuklimagement .:
W 9	6-5-80	Xerex copy of the service certificate issued by Kalpakkam branch.	Ex. N	o. Date	Description
W10	22-3-96	Xerox copy of the service certificate		(7-[]- k C	Xelox copy of the settlement.
		issued by Thousand Lights branch.	M.S	16407-84	Kerox copy of the settlement.
W11	:7-1 9 7	Xerox copy of the service certificate	M3	27-(0-88	Net ox copy of the settlement.
		issued by Ashok Nagar branch.	M4	08-01-0 50-000-00	Xerox copy of the scittlement.
W 12	NJ .	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank	M5 M6	00407-96 08406-95	Karox copy of the settlement Xarox copy of the minutes of conciliation to garedings
		regarding recruitment to subordinate care and service conditions.	мл	28-05 %.	Aerox copy of the order in W.P. 560787291
₩13	Na .	Nerox copy of the Reference book on Staff matters Vol. III consolidated upto	548	(5-03-96)	Xerox copy of the noder is O.P. No. \$787/97 of High Court of Orissa.
W]4	6-3-97	31 12.95. Xeros copy of the call lester from Madura.	М9	Bruit/ikt	Nerox copy of the order of Supreme Court in St.P No. 3083/99.
	i	zonal office for interview of messenger post V. Motalikannan.	M:0	Ni!	Xerox copy of the wait last of Chennal Module
W(IS	6-3-97	Merox copy of the call letter from Madural Acad office For interview of the Senger post—K. Subburaj.	МП	25-10-99	Xerex copy of the order passed in CMP No.16259 and 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 19 जुलाई, 2007

का, आ. 2202, — औद्धोगिक विवाद अधिनियम, 1947 (1947 का 14) की थारा 17 के अनुसरण में, केन्द्रीय सरकार, स्टेट बैंक ऑफ इण्डिया के प्रवंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिध्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्धोगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 221/2004) को प्रकारित करती है, जो केन्द्रीय सरकार को 19-7-2007 को प्राप्त हुआ था।

[सं. एल-12012/345/98-आईआर(ची-I)] अवय कुमार, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2202.... In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 221/2004) of the Central Government, Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 19-7-2007.

[No. L-12012/345/98-IR (B-I)] AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAL

Wednesday, the 31st January, 2007 PRESENT:

Shri K. JAYARAMAN, Presiding Officer Industrial Dispute No. 221/2004 [Principal Labour Court CGID No. 59/99]

(in the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the fodustrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

RETWEEN

Sri A. Sekar : [Party/Petitioner]

٨ND

The Assistant General Manager, : II Party/Management State Bank of India, Z. O. Chermai.

APPEARANCE

For the Peritioner : Sri V. S. Ekambaram,

Authorised Representative

For the Management : M/s. K. S. Sundar, Advocates

AWARD

 The Central Government Ministry of Labour, vide Order No. L. 12012/345/98-IR (B-I) dated 03-02-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chemnai and the said Labour Court has taken the dispute on its file as (Ci)D No. 59/99 and issued notices to both parties. Both sides entered appearance and filed their Claim Statement and Counter Statement respectively. After the constitution of this CGIT-con-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as 1-D. No. 221/2004.

2. The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Shri A. Sekar, wait list No. 392 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State. Bank of India and he was given appointment as messenger. after an interview and medical examination. He was appointed on temporary basis at Siruthozhil branch from 10-06-1981. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/ Bank, in addition to its conner, filed a copy of settlement. under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Pederation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was noreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Struthozbal branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 10-6-1981, the Petitioner has been working as a temporary messenger and some time performing work in other branches also. While working on temporary basis in Anna Nagar West branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required

any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non employment. Since the conditiation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal. the reference framed did not satisfy the grievance of the Potitioner, he has made a fresh representation to Govt, to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as: obtained prior to 31-3-97 and to regularise from in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the semlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G & 25H of the LD. Act. The termination of the Petitioner is against the provisions of Para 52204) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank bus been Regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of perty cash or by directing him to work under assumed name or by both which amounts to unfair labour. practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant! benefits

 As against this, the Respondent in its Counter. Statement alleged that reference made by the Govr. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitionet is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section $1\beta(1)$ and 18(3) of 1.D. Act in flew of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts. that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in soninging; Due to the business exigency, the Respondent/ Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff. Federation which resulted in five settlements dated 17-11-87, 16-07-88, 07-10-88, 9-1-91 and 30-7-96. The said: seitlements became subject matter of conciliation proceedings aim minutes were drawn under section 18(3). of L.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No.392 in wait list. of Zonul Office, Cherman, So far 357 wait listed temperary. candidates, our of 744 wait Ested temporary employees. were permanently appointed by Respondent/Bank, it is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in raims of settlements. drawn as per retreachment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged. for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A. B. and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temperary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service. in any calendar year after 1-7-75 or minimum 70 days. aggregate temporary service in any continuous block of 36. dalendar months were to be considered. As per classe %the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list. was to lapse in December, 1991 and the cut off date was extended up to 31-3-97 for filling up vacancies which were to arise upon 31-12-91. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary. employees were working in gave vacancies and not in regular permanear vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 392 he was not appointed. The said settlements were boss fide which were the only weskable solution and is binding on the Patitioner. The Petitioner is estopped from questioning the settlements directly of indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any groon so far and the settlements of bank level settlements and operated Stroughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981. does not apply to Respondent/Bank and this Tribional basno jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified. before the Petitioner was engaged. It is also not convect to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with energy.

- In the additional claim statement, the Petitioner. contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV. post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously. with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services. of the Petitioner as he has acquired the valuable right enshriped in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait. listed workmen with ulterior motive. The Respondent/Bank. has been arbitrarily filling up the vacancies with the persons. other than wait listed workmen according to their whims. and fancies. Hence, the Petitioner prays that an award may be passed in his favour.
- 6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner, Hence, the Petitioner prays that an award may be passed in his favour.
- 7. In these circumstances, the points for my consideration are :—
 - (f) "Whether the demand of the Petitioner in Wait List No. 392 for restoring the wait list of temporary messengers in the Respondent/ Bank and consequential appointment thereupon as temporary messenger is justified?"

(ii) "To what retief the Petitioner is entitled?"

Point No. 1:-

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- 8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored. hy Employment Exchange and they having been called for interview and having been selected and wait fisted in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary. basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen. concerned and while the matter was pending in Writ Petition. No. 542 (Civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank. and has been marked as Ex. Ml. The Petitioner in this case. and the Pethioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.
- On behalf of the Petitioner, it is contended that: these Petitioners were recruited as temporary employees. in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service. exceeding 200 days, hence the question of Petitioner. working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V A of the LD. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retrenched messengers.

and are oligible to be reinstated. Learned representative for the Petitipner contended that in 1996 LAB & IC 2248 Central Bank of India Vs. S. Satyam and Others the Supreme Court has held that Chapter V-A of the LD. Act providing for retrenchment is not enacted only for the benefit of the workmap to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retremended workmen. Therefore, the contention of the Respondent/ Bank that the Petationer has no valid and enforceable mehr for appointment is unaenable, it is further contended that on behalf of the Petisioner that Ex.W2, W3 and W8 as well as Ex. MR which constitute/relate to the circular instructions of the Respondent/Bank issued from time to ringe in connection with the implementation of the settlements on absorption and which are statutory in character, Further, a combined study of Ex.MI and the averments of MW (and MW2 and their testimonies during the cross examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause I of Ex. Mt deals with Categoritation of retreached lemporary employees into "A., B and C1, but this categorization of "A, B and C1 is quite opposed to the doctrine of flast come-first gof or first come—[ast go? and therefore, the categorization in Clause. I is illegal. Clause 1 (a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees. is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W\$. Further, the appointment of daily wage basis (or regular messengerial jobs etc. are strictly prohibited as per bank's eleculars/insuractions, in such circumstances, the absorption of casuals along with the eligible categories is: not valid. Therefore, these persons who were engaged by the Resphodent/Bank on casual basis should not be given permanent appointment in the bank service. Those cusuals were given more beneficial treatment in the matter of an iving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and change. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/ Bank had alleged to have prepared only one wait list for each module as per Ex. M 10 in this case. Those candidates. under E4.M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when ithe wait list Ex. M 10 was prepared, but it is mentioned in Ex. M 10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked at Ex.Ml, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called noninclusion except his bald statement. Further, according to

MW I wait list under Ex.M10 was prepared on 2-5-92 but. there is no pleaning in the Counter Statement with regard. to this wait list. Further the Hoalble High Court has head in its order dated 25-7-99 to W.P.No.7872 of 1991, which is marked as an exhibit, up which it is stuted that "it is close that the 1987 scale ment was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages. daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of caudidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India. Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegasity crenmined or perpenated by the Respondent/Bank by combing equals with unequals. it is further contended on behalf of the Petitioner that as per deposition of MW I want list under Ex.M10 comparises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industry wise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the 6250418 as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 and 16 of Constitution of India. Therefore, the Petitioner contendors that preparation of Ex. M (0) namely wait list is not inconformity with the instructions of Ex. M2 and nonpreparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as perinstructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore. no wait list was released / published even after the Court order in WMP No.11932/91 in W.P. Nn.7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date. of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation. of instructions and ceased to have the credibility attached. to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chemna: and Madura; and only during the year. 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged to leave vacancy, they have not been fold at the time of initial appointment that their appointment was in leave vacancy. Purther, even before or after the settlement on absorption of temporary employees. the expression that they were engaged in leave vacancy

was used as a device to take them out of the principal clause 2 (00) of the LD, Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sasary Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SOC 201 H.D. SINGHVs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workings as "badlies casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service letter and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also had in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in after violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed. to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the avernient of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/ Back is arbitrary, male fide and illegal and the Respondent/ Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-*5 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) sendement nor 12(3). settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M 1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No.11932/91 in W.P. No.7872/91 ceased to have any relevance when the main writ has been disposed. of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management winceses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as I.v., M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence

of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months. as enshrined under Section 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatury provisions of Section 25 and therefore, they are deemed to be in continuous service. of the Respondent/Bank and they are entitled to the benefits under the provisions of LD. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected LDs have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rolings reported in 1985 II LLI 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has beld that the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with handreer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the hank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estupped from making claim as they had accepted the settlements drawn under the provisions of Section 18(1) and 18(3) of the LD. Act, in lieu of the provisions of law and implemented by the Respondent/ Bank and the claim of the Petitioners are not bonafide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he

was positioned down in the seniority. The Respondent/ Bank wastengaging, temporary employees due to business. exigency for the performance of duties as messenger. Further, the allegation that he was spinsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also meomeet, they were engaged against leave vacuncies. The settlement entered into by the Respondent/Bank and the federation were broughted which were the only workable solution and is binding on the Petirioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore. the Petitioner is estopped from questioning the sentlement directly of indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any umonjand the settlements were bank level semlements. and operate throughout the country. Further, he relied on the rulingship activities 1991 FLLJ 323 ASSOCIATED GLASS. ÎNDUSTRIES L'ID. Vs. INDUSTRIAL TRIBUNAL A.P. AND O'BARS wherein under Section 12(3) the union entered into a semigroup with the management settling the claim of 11 workmon and the workmen resigned from the job and reperved terminal benefits, but the workmen ruised. a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plan that the settlement reached in the equipment of conciliation is vitiated by fraud. misrepresentation or correion, the settlement is binding on the workman." Learned counsel for the Respondent further relied on the rolings reported in 1997 II I 1.1 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherement Division Bench of the Bombay High Coun has held that "therefore a sessimment arrived at in the course of the enneiliation proceedings with a recognised negative union will be binding on all workmen of the establishment. even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts. The object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the abpence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further reflection the rolings reported in 1997 LLLI 308 K.C.P. LTD. V: PRESIDING OPPICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) thank arrived at carside the conclusion promeedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3), 4 sculement of the first category has limited application and binds merely parties to it and settlement of the second cutegory made with a recognised majurity union has extended application as it will be binding on all workmen. of the outhblishment. Even in case of the first category, if

the restlement was reached with a representative union 6). which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binaing on the contesting workman. also. The further record on the indings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived or by the free will of the parties and it a pointer to there. being good with between them. When there is a dispute that the settlement is not bong fide in nature or that it has been arrived aron account at trand-misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt, may refer for adjudy attor after countring the alleganists at there is an underlying arranging that the seitlement reached with the help of the conclination officer must be fair and reasonable "Retsing on all these decisions framed course) for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Patrioner is a surme among them. they have entered into sortlement with the bank and therefore, it is binding on the Potitioner, Further, he argued that no union of the hank has questioned the settlement and in such circumstances of cannot be said that it is not binding on them and he is estemped from disouring the

II. Learned counse, for the Respondent former contended that though the reference made in this ease and other connected disputes is "whether the demand of the workman with worklish. Not given for restoring the wait list of remporary measuragers in the establishment of Respondent/Bank and consequential appointment therefugned as temporary messenger is justified?" The Petitiones contended that the retreatment made by the Respondent/Bank is not valid and he has to be reinstated in service with full hack vages are Hence, the Petitioner's contention against the reference made by the Govt, is not valid. Justiner, in this case, the Count has to see whether the restoration of oan last can be made as contended by the Petitioner and not to instatement,

12. But, as against this on behalf of the Petitioner at is contended that mere wording of reference is not decisive in the matter of tension by of a reference and he relied on the ratings reported in 1998 LAB IC 345 SECRETARY. KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL. KOLLAM wherein the Kerala High Court has held that there wording of reference is not decisive in the matter of tensibility of a reference. Even though the Tribunal connut go beyong the order of reference, if points of difference are descenible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardshop involved in moving the machinety again." It further held that the Tribunal should look into

the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAGNATHAN ORIENT PAPER MILLS \L INDUSTRIALTRIBUNAL & ORS, wherein the Madhya Pradesh High Court has held that Tibe Tribunal cannot go behind the terms of reference, but that does not mean that Transport look into the pleadings of parties." He also relied on the rollings reported in 1998 LAR IC 1507 A. SAMBANTHAN Vy PRESIDENG OFFICER, LABOUR COURCE MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not altempt to consider the order under reference in a technical manner or a perfautic manner, but should consider the order of reference in a fair and reasonable matter." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal his jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labout Court is expected to decide the real nature of disputes between the parties and with that object in view, ii should consider the order of reference in a fair and Masonable manner, though the order of reference is not coppily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the settenehment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/ Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as afleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the sole of the Respondent that it is beyond the scope of reference is without any substance.

- 33. I find some force in the contention of the representative for the Petitioner. Pherefore, I find this Tribunch is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.
- 4. Then the learned counsel for the Respondent contexced that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings, recorded in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V.VIJEESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears.

in the select list on the basis of competitive examination. acquires a right of appointment in Govil service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff. and a policy decision has been taken to reduce the number. of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative ments. In which, the Supreme Court has held. that hin such discumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held. that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion. of their names in the said panel for permanent absorption. in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Jodge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates." included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question. the wait list and, singe there is no mala fide on the part of the Respondent/Bank, in preparing the wait list, it cannot be said that preparation of wan list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot play for reinstatement as alleged by him. Firether, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc/ temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door. (c) he was not eligible and qualified for the post at the time.

of his appropriate ent; (d) his record of service since his appointment is not satisfactory. These are the additional professors ipalicated by us in para 12 which would arise from group of spot blanket orders. None of the decisions relied upon by the High Court justify such wholesale. succeasitives; arders. Moreover, from the mere ংজ্যান্তঃ এই চ কা an ad-inco employee for one year, it cannot be persumied that there is need for regular post. Such a presumption may be justified only when such continuance. extends so several years. Further, there can be no role of shared to tuck matters. Conditions and discumstances of one unit may may be the same as of the other. Just because en ene :: 134 la direction was given to regularise employees. who have put in one year's service as far as possible and subject to [frall!!ling the qualifications, it cannot be held that in as \$1 and every case, such a direction must follow: arrespective of and without taking into account the other. releves/ cijeum-vancas and considerations. The relief must be mouldail in each case having segard to all the relection facts and discounstances of that case. It cannot be 🧸 mechanistal act has a judicious one. From this, the implement directions onest by held to be totally untenable senonsustainable. Thus, the Supreme Court set uside the orders. of lower Charts. He forther relied on the decision recorted. in 1997 USEC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF HIHAR AND OTHERS wherein the Full Bench. of the Sepreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation. or regularisation of an irregularly appointed candidate. would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent. on such a mon-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, digrefore, remained a nullity." 'Therefore, learned counsel for the Respondent contended that these temporary employees were appointed. only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave. vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank, Further, he relied on the ruling reported in AIR 1997 SCC 3657 HIMANSHU KUMAR YIDYAR THE & ORS V., STATE OF BILLAR AND ORS, wherein the Supreme Court has held that "they are temporaryjemployees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retreachment under the LD. Act. The concept of retrenchment therefore, cannot be stretched to such an expent as to cover these employees. Since they are only daily wage employees and have no right to the posts,

their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the LD. Act retreachment procedure following principle of 'last come-first go' is not mandatory but only threatory, onsafficient grounds shown, the employer is permitted to depart from the said principle settenching seniors and retaining juniors. Though in this case, the Petitioner has alleged that his jumers have been made permanent in banking service, he has not established with any evidence. that his junious were made permation; by the Respondent/ Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this. Tribunal that he has worked more days than the Peimoner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the clama is to be dismissed with

 Learned Septim: Advicate further argued that over it in recent decision reported in 2006 4 SCC 1 SECRETARY. STATE OF KARNATAKA VS. UMA DEVI, the Supreme. Court has held that merely because a temporary employee. or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant index. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Permer, it has also held that "it is not as if, the person who accepts accent gagernent either temporary or casual in nature. is not aware of his proployment. He accopts the carologment with open eyes. It may be true that he is not ina position to bargain the int arms length since he might have been searching the same employment so as to eke out. his Sectificati and accepts whatever he gets. But on that ground asons, it would not be appropriate to jettison the constitutional actions of appointment, perpetuate illegalities. and to take the view that a person who has temporarily or tasually got employed should be directed to be continued permanently. By during another mode, of public appointment which is not permissible." Further, the Supreme Court with. Taying down the law, has clearly. held that Trunkess for not continent is in terms of the relevant. reles and exter a proper competition among qualified persons, the wase would not confer any right on the appointed in this to be claimfield that merely because a reraporery corpliny or or a casual wage worker is continued. for a time boyend the term of his appointment, he would and be entitled to be absorbed in regular service or made. permanent merely on the strength of soch continuance, if the original uppy into antiwas not made by following a docprocess of selection as envisaged by relevant rules. Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD.AND OTHERS VS. SOMVTR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Purther, in CDJ 2006. SC 395 MUNICIPAL COUNCIL, SUJANPUR VS. SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Article 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVILOPMENT CORPORATION VS. S.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service. " The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

Relying on all these decisions, learned counsel. for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five sculements entered into between the Respondent/Bank and Pederation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of main fide, misrepresentation, fraud or even corruption or other inchacements. Under such circumstances, I find the

Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

- 18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstauement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.
- 19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident. I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/ Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2:

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing fractings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and promounced by me in the open court on this day the 31st January, 2007).

K. JAYARAMAN, Presiding Officer

Witnesses Examined:

For the Petitioner V

WWI Sri A. Sekar

WW2 Sti V. S. Ekambaram

For the Respondent

MW1 Sri C. Mariappan MW2 Sri C. Ramalingam

Documents Marked:

Ex. No. Date		Description
Wį	1-8-89	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.
W2	20-4-88	Xerox copy of the administrative guidelines issued by Respondent/Bank

for implementation of Ex. M1.

5100	———	THE GAZETTE OF INDIA: AUGUST	4. 200	7/SRAVAN	A 13, 1929 (Part Π Sec 3(n))
W 3	24-4-9	Xerox copy of the circular of Respondent/Bank to all Branches	W20	26 (13 97	Xerex copy of the letter advising selection of part time Mental—G. Pandi
	. :	regarding absorption of daily wagers in Messenger vacancies.	W21	31 3 97	Xerux copy of the appointment order to Sri G. Panda.
W 4	20-08-91	Xerox copy of the advertisement in the Hindu on daily wages based on Ex. W4. Xerox copy of the advertisement in The	wn	Feh. 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madural Circle
W6	15-3 97	Hindu extending Period of qualifying service to daily wagers.	W 23	13-02-95	Xerox copy of the Madurai Module Circular letter about Engaging temporary
w7		Nerox copy of the circular letter of Zonal Office, Chennai About filling up of vacancies of messenger posts.	W24	09 -11-93	employees from the panel of wait list. Xerox copy of the Head Office circular No. 28 repaiding Norms for sunction of
** /	25-3-91	Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before	W25	09407-92	messenger staff. Xerox copy of the minutes of the Bipartite meeting.
ws	: Na :	31-3-97. Xerox copy of the instruction in	W26	09-07-92	Xerox copy of the settlement herocon- Respondent/Bank and All India Staff Bank of India Staff Federation for
	!	Reference book on staff about casuals not to be engaged at office/branches to do messengerial work.			implementation of norms creation of part time general intendents.
W9 WIO	14-09-81 3-8-88	Xeros copy of the service certificate issued by Simuhozhii Branch.	W 27	07-02-06	Xeras copy of the local Head Office circular about Conversion of part time employees and redesignate them as
WII	10-6 89	Xerox copy of the service certificate issued by Mannady Branch. Xerox copy of the service certificate	W28	31-12-85	general arrendants Xerox copy of the local Head Office circular along Appointment of
W 12	25-08-86	issued by Purasawalkam Branch. Xerox copy of the service certificate tssued by Triplicane Branch.	tempurary employees in subordi caére. For the Respondent/Management :—		cadre.
W13	21-12 90	Xerox copy of the service certificate	Ex. No		Description
	ļ	issued by Anna Nagar Branch.	MI	17-11-87	Xerox copy of the sentement.
W14	NI .	Xerox copy of the administrative	M2		Xerox copy of the sentement.
	:	guidelines in reference book on staff matters issued by Respondent/Bank	M3		Xerex copy of the settlement.
		regarding recruitment to subordinate	344		Xerox copy of the settlement.
	ATI :	care & service conditions,	MS		Xerox copy to the settlement.
W]5	N ii .	Xerox copy of the Reference book on Staff matters Vol. III consolidated upto 31-12-95.	M6	09-06-95	Xerox croy of the minutes of conclitation proceedings.
W16	06 03-9¶	Xerox copy of the call letter from Maduraj Zonal Office for interview of messenger	M7		Xerox copy of the order in W.P. No.787791
W]7	06-03-97	post—V. Muralikannan Xerox copy of the call letter from Madmai zonal office For interview of	M8		Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa.
		messenger post—K. Subburaj	M9	10 (37-99)	Xerox copy of the uniter of Supreme Count in SLP No. 3082/99
₩18	06-03-97 i	Xerox copy of the call letter from Madurai zonal of fire for interview of messenger post —J. Vetmoragan	M10		Xerox copy of the wait list of Chennal Module.
W19	17-03-97	Xerox copy of the Service particulars— J. Velmunigan	Mil		Xerox copy of the order passed in CMP No.16389 and 16290/99 in W.A. No. 1893/99

ं नई दिल्ली, 19 जुलाई, 2007

कर,आ. 2203.— औद्योगिक विवाद अधिनिकम, 1947 (1947 कर 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, स्टेट बैंक ऑफ इंग्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण, चैत्रई के पंचाट (संदर्भ संख्या 234/2004) को प्रकाशित करती हैं, जो केन्द्रीय सरकार को 19-7-2007 को प्राप्त हुआ था।

> [सं एल-12012/442/98-आईआर(बी-I)] अजय कुमार, डेस्क अधिकारी

New Delhi, the 19th July, 2007

8.0. 1203.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 234/2004) of the Central Government, Industrial Tribunal-cum-Labour Court, Chemia as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Governmencon 19-7 2007.

[No.L-12012/442/98-1R (B-I)]

AJAY KUMAR, Desk Officer

ANNEXLIRE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CLIM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007 PRESENT:

K. JAYARAMAN, Presiding Officer Industrial Dispute No. 234/2004

[Principal Labour Court CGID No. 160/99]

(In the matter of the dispute for adjudiation under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Maanagement of State Bank of India and their workmen)

BETWEEN

Sri R. S. Sinasulwamanian

: TParty/Petitioner

AND

The Assistant General Manager,

: Il Party/Management

State Bank of India, Z.O. Chennai.

APPEARANCE

For the Petitioner

: Sri V. S. Ekamberam,

Authorised Representative

For the Management

 M/s. K.S. Sundar, Advocates

AWARD

 The Central Government Ministry of Labour, vide Order No. L-12012/442/98-TR (B. I) dated 12-02-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chemnai and the said Labour Court has taken the dispute on its file as CGID No. 16099 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT Cum labour Count, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as LD. No. 2347XD4

The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Shri R.S. Sivasubrammian, wait list No.513 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is cruitled?"

The allegations of the Petitioner in the Claim.
 Statement are briefly as follows:

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger. after an interview and medical examination. He was appointed on temporary basis at Royapettah branch from 30-09-85. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/ Bank, in addition to its counter, filed a copy of seulement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was nureasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Royapettah branch. He was called for an interview by a Committee appointed by Respondent/Hank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. The Petitioner has been working as a temporary messenger and sometimes performing work in other branches also. While working on temporary basis in Mandaveli branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the

Peritioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Herice, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure. the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt, to reconsider the reference and the Petitioner requested the Respondent/ Bank to captique to engage him in service as obtained prior to 31,3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner overe treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner duty in temporary services after the sentement. The Petitroher was not aware of settlement by which his services and number of days worked by him after interview do not merji consideration. The Politioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation of ficer. Therefore, the Respondent's action in obtahsorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G & 25H of the LD. Act. The termination of the Peritioner is against the provisions of Para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/ Bank has been Regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Responded/Bank engaged the Petitioner and extracted the same workleither by payment of petty cash or by directing. him to work under assumed name or by both which amounts. to unfair fabour practice. The wait list suffers sections infirmities and it is not based on strict seniority and withour any rationale. Hence, for all these reasons the Petitioner. peays to grant relief of regular employment in Respondent/ Bank with all attendant benefits.

 As against this, the Respondent to its Counter Statement falleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim. Statement, The settlement drawn under provisions of Section 18(1) and 18(3) of LD. Act in lieu of provisions of law, setrenthment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior ingrive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/ Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those emptoyees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17, 11-87, 16-07-88, 07-90-88, 9-1-91 and 30-7-96. The said sentements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of 1.D. Act. In terms thereat, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temperary employees and the Petrikmer was wait listed as candidate No.510 in wait list of Zonal Office, Chennai, So far 357 wait listed temporary candidates, out of 744 wait listed temporary employees were permanently appointed by Respondent/Bank. It is talse to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Peritioner having submitted to selection process in terms of seitlements drawn as per retrenchment principions referred to above. cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B. and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate. temporary service to any continuous block of 36 calendar months and under category (C) the temporary employees. who have completed 30 days appregate temporary service. in any caleptar year after 1-7-75 or minimum 70 days. aggregate remporary service in any continuous block of 36. calendar moralis were to be considered. As per clause 7, the length of temporary service was to be considered for sensority in the wait list and it was also agreed that wait list. was to Japse in December, 1991 and the cut off dute was extended up to 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary. employees were working in leave vacancies and not in regular permanent vacancies. In terms of atoresaid settlements, our of 744 wird listed candidates, 357 temporary. employees were appointed and since the Petitioner was wait listed at 510 he way (a) appointed. The said settlements were bona fide which were the only workable solution and is hinding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable in be rejected. Further, the said semicinents were not questioned by any union so far and the semicments of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment. (Conferment of Permationt Status to Workmen) Act. 1981. does not apply to Respondent Bank and this Tribunat has no jurisdiction to entertain such plea. It is not correct to

say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31.12.94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has on claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

- In the additional claim statement, the Petitioner. contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class ${
 m IV}$ post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously. with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment, Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.
- 6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions Inid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.
- 7. In these circumstances, the points for my consideration are:
 - (i) "Whether the demand of the Petitioner in Wait List No. 513 for restoring the wait list of temporary messengers in the Respondent/

Bank and consequential appointment thereupon as temporary messenger is justified?"

(ii) "To what relief the Petitioner is entitled?"

Point No. 1

- 8, In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored. by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen. concerned and while the matter was pending in Writ Petition No. 542 (Civil) 1987, the Respondent/Bank hurriedly entered into a sertlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Responden/Bank. and has been marked as Ex. Ml. The Petitioner in this case. and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent. vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.
- 9. On behalf of the Positioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars. issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service. exoceding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V A of

the LD. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retreached messengers and are elligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the LD. Apt providing for retrenchment is not enacted only for the hoteful of the workmen to whom Section 25P applies but for all cases of retrenchment. Therefore, the application of Section 2511 cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bunk that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex, W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular idstructions of the Respondent/Bank issued from time to time in connection with the implementation of the extlements on absorption and which are statutory in chair. Firther, a combined study of Ex.Mi and the averments of MWI and MWI and their testimonies during the cross-examination will eleatly show how the bank has given a raw deal to the Petitioner from the beginning linking has future with the s_i ttlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary ent, loyers into A. Blanc Cl. but this categorization of A, $3 \& C \sim 4$ anic opyosed to the doctrine of Tast come— first $_{2}$ = 66 figs (ye) me— last 80 and therefore, the categorization. in Clause a in illeget. Clause i (a) of Ex.Mit provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of measurages, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of tempostry employees is not valid. Further, engaging casuals to fio messengerial work is in contravention of the guidelines mensicated in Reference Book or: Staff matters, copy of which is marked as Ex.W8. Purther, the appointment of daily wage basis for regular messengerial jobs etc. are Strictly prohibited as per bank's circulars/instructions. In such circumstantes, the absorption of casuals along with the eligible categories is not valid. Pieceson, these persons who were lengaged by the Respondent/Bank on casual buris should not be given permanent apprintment in the hank service. Thuse casuals were given more beneficial Beatment in the moner of arriving at qualifying service for interview and selection. But temporary employees have not been informed shout this amendment which includes casuals affecting their interest and chance. Further, as per instructions in $\mathbf{E} \in \mathcal{W}(2)$ our types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each modul; as per Ex.M 10 in this case. Those condidates under $E_{\rm A}/M10$ were found suitable for appointment us mes engers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Fx, 41, M3 and M4

respectively. Bur, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex.M10 was prepared on 2.5, 92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order detect 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that "it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 scittlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 semignent and 1988 semignment since they formed two distinct and separate classes and they cannot neat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India. Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 comparises of both messengerial and nonmessengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise sentement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex.M 10 namely wait list is not inconformity. with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular, Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released / published even after the Court order in WMP No.11932/91 in W.P.No.7872/91 directing the Respondent/Bunk to release the list of successful candidates pursuant to the first advertisement published in The Hinda dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates dute of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madura: and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribanal marking it as a confidential document. It is

further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement. on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (oo) of the LD. Act, 1947. Though the Petitioner's work in the Respondent/ Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastay Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCCOULTED SINGHAL RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is ittegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service letter and therefore, the wait list under Fix. M IO which has been drawn up is contrary to law and also had in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a condidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. MI to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Fx. M7 and M11 interim orders passed by High Court of Madras in WMP No.11932/91 in W.P. No.7872/91 ceased to have any retevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner, Further, though the Respondent/ Management has examined two witnesses, the deposition

of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/ Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as anshrined under Section 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of LD. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected LDs have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have acqually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II ILLI 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression 'actually worked under the employer' cannot mean that those days only when the workman worked with hummer, sickle or pan but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the

Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Section 18(1) and 18(3) of the LD. Act, in lieu of the provisions of law and implemented by the Respondent/ Bank and the claim of the Petitioners are not bonafide and are made with ulterior motive. Forther, they have concealed the material facts that the Petitioner was wait listed as perlength of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/ Bank was engaging temporary employees due to business. exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation than he workelf as tempurary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered thio by the Respondent/Bank and the federation. were borafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait fisted and therefore, the Petitioner is estupped from questioning the settlement directly of indirectly and his claim is tiable to be rejected. Furthermore, the said settlements were not questioned by any umori and the settlements were hank level settlements. and operate throughout the country. Further, he relied on the rulings reported in 1994 ILLU 323 ASSOCIATED GLASS. INDUSTRIES LTD. <u>Vs.</u> INDUSTRIAL TRIBUNAU A.P. AND OTHERS wherein under Section 12(3) the union. entered into a settlement with the management settling the claim of [1] workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, musrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLF 1189. ASHOK AND OTHERS Vs. MAHARASIITRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the concubation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of main fidex, froud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is ensuled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Coun has held that "settlements are divided

into two categories namely (i) those arrived at outside the conciliation proceedings under section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under section 18(3). A settlement of the first casegory has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended. application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen alm." He further relied on the ratings reported in A1R 2000. SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. $V_{\rm K}$ STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "semiement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bond fide in nature or that it has been arrived at on account of froud, misrepresentation or concealment of facts or even corruption and other inducements, is could be subject matter of yet another. industrial dispute which an appropriate Govt, may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them. they have entered into settlement with the bank and therefore, it is bioding on the Petitioner, Further, he argued that no union of the bank has questioned the settlement and in such direumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

II. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is "whether the demand of the workman with wait list. No, given for restoring the wait list of Temporary messengers in the establishment of Respondent/Bank and consequential appointment theretipon as temporary messenger is justified?" The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's entitletion against the reference made by the Govt, is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not rejectatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Peritioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION

Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "more wording of reference is not decisive in the matter of tembility of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the muterial before it, it has only on duty and that is to decide. the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery. again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, be argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service. or not for which he relied on the rulings reported in 1998. LAB IC 1664 VANSAGNATHAN ORIENT PAPER MELLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Maditya. Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court.7 Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Peritioners have been retrenched from the Respondent/ Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged. by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13 I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/

Bank, I find the Petitioner is not entitled to question the settlement.

 Then the learned counsel for the Respondent. contended that since the Petitioner mentioned that be has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and be relied on the rolings recorded in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K. V. VIDERSH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff. and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom. persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held. that "in such direumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 19976SCC584 SYNDICATEBANK & ORS Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has beld. that "by its tener dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion. of their names in the said panel for permanent absorption. in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported an 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA whereig the Supreme Court has held that "candidates." included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as afleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to

the direction(that all those ad-hoc temporary employees who have obntinued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc/. temporary employee who has been continued for one year. should be regularised even though (a) no vacancy is avaitable for him which means creation of a vacancy (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door (c) he was not eligible and qualified for the post ar the time. of his appointment (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied opon by the High Court justify such wholesaie. unconditional orders. Moreover, from the mere continuation of an *ad-hoc* employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance. extends to soveral years. Further, there can be on rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees. who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held. that in each and every case, such a direction must follow irrespective of and without taking into account the other. relevant circulmstances and considerations. The relief must be moulded in each case having regard to all the relevant. facts and execumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impurped. directions thust be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 BISCE I ASHWANI KUMAR AND OTHERS Vs. STATE OF HIHAR AND OTHERS wherein the Full Bench. of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation. or regularisation of an irregularly appointed candidate. would arise, if the candidate concerned is appointed in an irregular magner or on *ad-hoc* basis against an available. vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned valcancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them. or to give them valid confirmation. The so called exercise. of confirming these employees, therefore, remained a nullity." "Therefore, learned courset for the Respondent contended that these temporary employees were appointed.

only due to exigencies and they have not appointed against. any regular vacancy and they have only appointed in leave. vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank, Further, he relied on the rulings reported in ATR 1997 SCC 3657 HIMANSHLI KUMAR VIDYARTHI & ORS VESTATE OF BIHAR AND ORS, wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their threngagement from service cannot he construed to be a retrenehment under the LD. Act. The concept of retrenehment therefore, cannot be stretched to such an extent as so cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 FLLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the LD. Act retrenchment procedure following principle of "last come-first go" is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors. Though in this case, the Petitioner has alloged that his jumines have been made permanent in banking service, he has not established with any evidence. that his junious were made permanent by the Respondent/ Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this: Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

Learned Senior Advocate further argued that even. in recent decision reported in 2006 4 SCC 4 SECRETARY. STATE OF KARNATAKA Vs. UMA DEVI, the Supreme. Court has held that merely because a temporary employee. or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who hy the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature. is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain —not at arms length since he might have been searching for some employment so as to eke out. his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got ensployed should be directed to be continued. permanently. By doing so, it will be creating another mode. of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointme...... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDI 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS VS. SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUI ANPUR VS. SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme aushrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION VS. S.C. PANDEY, wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Covernment in the wake of prevailing market economy, globalisation, privatisation and oursourcing is evident, in view of the sented legal position, as poriced hereinbefore."

Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Purther, their prayer before the labour authorities. was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

- I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the scalement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bong fide in nature or it has been arrived at on account of male fide, misrepresentation, fraud or even curruption or other inducements. Under such circumstances, I find the Peritioners cannot now question the seutements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed. I find the Petitioners current claim for reinstatement or regularisation in services of the Respondent /Bank.
- 18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.
- 19. But, I find since the Supreme Court has held that temporary employees are not intitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2;

The next point to be decided in this case is to what relief the Pedrioner is entitled?

- 20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.
 - 21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007)

K. JAYARAMAN, Presiding Officer

With	esses Eune	أببط	:	W16	17-03-97	Xerox copy of the Service particulars—	
For t	be Petitions	Ħ	WW1 Sti R.S. Sivasubramaniam WW2 Sti V. S. Ekambaram			J. Velmarugan	
For t	he Rekpons	den	MW1 Sri C. Mariappen	W17	26-03-97	Xerox copy of the letter advising selection of part time Menial—G. Pand	
	ment Man	rked:		WIS	31-03-97	Xerox copy of the appointment order to Sri G. Pandi	
W)	o.Daje ⊪8µ88	Xe.	Description for copy of the paper publication in ly Thanthi based on Ex. M1.	W 19	Feb. 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle.	
W 2	20 488	gui	rox copy of the administrative delines issued by Respondent/Bank implementation of Ex. M.).	W20	13-02-95	Xerox copy of the Maduria Module Circular letter about Engaging temporary employees from the panel of wait list.	
W3	24-1-91	Re:	rox copy of the circular of spondent/Bank to all Branches arding absorption of daily wagers in secured vacancles.	W2I	09-11-92	Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff.	
W4	01-46-91	Xer	rux copy of the advertisement in the advertisement on the advertisement on Ex. W4.	W22	09-07-92	Xerox copy of the minutes of the Bipartite meeting.	
WS W6	20 48-9 1 15:3-97	Xer Hin	rox copy of the advertisement in The Mu extending Period of qualifying vice to daily wagers. The copy of the circular letter of Zonal	₩23	09-07-9 2	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms-creation of part	
		Off	ice, Chennai About filling up of ancies of messenger posts.	W24	07-02-06	time general attendants. Xerrix copy of the local Head Office	
W7	25-\$-97	Xer Res	tox copy of the circular of spondent/Bank to all Branches arding identification of messenger			circular about Conversion of part time employees and redesignate them as general attendants.	
w8	N⊒ j	31-3 Xer	ancies And filling them before 3-97. From copy of the instruction in terence book on staff about casuals	₩ 25	31-12-85	Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate cadre.	
	i	not to be engaged at office/branches to		For the Respondent/Management :-			
	1	do r	io messengerial work.	Ex.No		Description	
W9	30-09-85	Xet	ox copy of the service certificate — ed by Royapettah Branch.	MI		Xerox copy of the sentement.	
W10	01-16-96		ox copy of the service certificate.	M2		Xerox copy of the settlement.	
			ed by Mandaveli Branch.	M3		Xerox copy of the settlement.	
W]]	Νi	Xer	ox copy of the administrative	M4		Xerox copy of the settlement.	
			lelines in reference book on staff ters issued by Respondent/Bank	M5		Xerox copy of the settlement.	
	:	rega care	arding recruitment to subordinate & service conditions.	М6	09-06-95	Xerox copy of the minutes of conciliation proceedings.	
W12	Nil .	Staf	ox copy of the Reference book on f matters Vol. III consolidated upto 2-95	M 7	28 05-91	Xerox copy of the order in W.P. No.7872/91.	
W13	06-08-97		nx copy of the call letter from Madurai at office For interview of messenger	M8	15-05-98	Xerox cupy of the order in O.P. No. 2787/97 of High Court of Orissa.	
₩]4	06-06-97	post	:V. Moralikannam ox copy of the call letter from	M9		Xerox copy of the order of Supreme Court in SLP No. 3082/99	
		Mad mes	lurai zonał office For interview of senger post K. Subburaj.	M10		Xerox copy of the wait list of Chennal Module.	
WIS	06-0 \$-9 7	zans	ex copy of the call letter from Madurai of office for interview of messenger J. Velmurugan	. MIT		Xerox copy of the order passed in CMP No.16289 and 16290/99 in W.A. No. 1893/99	

नई दिल्ली, 19 जुलाई, 2007

का आ: 2204.— औंबोंगिक विवाद अधिनियम, 1947 (1947) का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, स्टेट बैंक ऑफ इंग्डिया के प्रबंधतंत्र के संबद्ध वियोजकों और उनके कर्मकारों के धीच, अनुबंध में निर्दिष्ट औरब्रोमिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/त्रम न्यायालय, चेत्रई के पंचाट (संदर्भ संख्या 233/2004) को एकाशित करती है, जो केन्द्रीय सरकार को 19-7-2007 को प्रान्त हुआ था।

[सं. एल-12012/431/98-आईआर(बी-1)] अजय कमार, 'डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2204. In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 233/2004) of the Central Government, Industrial Tribunal-cambabour Court, Chennal as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 19-7-2007.

[No.T.-12012/431/98-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

REFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

> Wednesday, the 31st January, 2007 PRESENT:

Shri K. JAYARAMAN, Presiding Officer Industrial Dispute No. 233/2004

(Principal Labour Court CGID No. 152/99)

(In he matter of the dispute for adjudiation under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen).

BETWEEN

Sri. L. Babu

: I Party/Petitioner

AND

The Assistant General Manager, : If Party/Management State Bank of India, Z. O. Chennai.

APPEARANCE

For the Petitioner

 Sri V. S. Ekambaram, Authorised Representative

For the Management

 M/s. K. S. Sundar, Advocates

AWARD

 The Central Government Ministry of Labour, vide Order No. L-12012/431/98-IR (B-1) dated 10-2-1999 has referred this dispute earlier to the Tamil Natu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 152/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT Cum Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D.No. 233/2004.

2. The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Shri L. Baba, wait list No. 431 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

The allegations of the Petitioner in the Claim Statement are briefly as follows:

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Periamet branch from 6-8-1984. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under section [8(1) reached between management of State Bank. of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submined his application in the prescribed format through Branch Manager of the Perjamet branch. He was called for an interview by a Committee appointed by Respondent/ Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initialty worked as a class IV employee. From 6-8-1984. the Petitioner has been working as a temporary messenger and sometimes performing work in other branches also. While working on temporary basis in Avadi branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not required any more and he need not attend the office from

1-4-1997. Hence, the Petitioner raised a dispute with regard. to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Government to reconsider the reference and the Pecitioner. requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularise-him in service in due course. The Respondent/ Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Peritioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him. after interview do not ment consideration. The Peritioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repregnant to Section 28G & 25H of the 1.D. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sastry Award. Even though the sentement. speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions. regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of recevant provisions of circular. The Respondent/Bank. engaged the Petitioner and extracted the same work either. by payment of petty cash or by directing him to work underassumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter-Statementalleged that reference made by the Government. for adjudication by this Tribunal itself is not maintainable. The Perificular was not in continuous service. Hence, the question of regular appointment absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 19: Francis (3) of LD. Act in lieu of provisions of *ew. retreachment and implemented by Respondent/Bank. The about of the Petitioner is not bono fide and made with «Renion moneye. The Peritioner concealed the material facts." that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in semority. Due to the business exigency, the Respondent Bank engaged the temporary employees for performance. of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and

when their case was espoused by State Bank of India Staff. Federation which resulted in five settlements dated 17-11-1987, 16:07-1988,07:10-1988,9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation. proceedings and minutes were drawn under Section 18(3). of LD. Act. In terms thereof, the Petitioner was considered. for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No.431 in wait list of Zonal Office, Cheman, So far 357 wait listed temporary. candidates, out of 744 wait listed temporary employees. were permanently appointed by Respondent/Bank, It is false to allege that the Petitioner worked as a temporary. messenger. The Petitioner was engaged only in leavevacancies as and when it arose. When the Petitioner having submitted to selection process in terms of sentements drawn as per retrenchment provisions referred to above. cannot ruto around and claim appointment. Such of those temporary employees who were appointed were engaged for more comber of days and hence, they were appointed. Under the settlement, employees were estegorised as A, B. and C. Considering their temporary service and subject to other eligibility contenia under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temperary service in any continuous block of 36 calendar. months and under caregory (C) the temporary employees who have completed 30 days aggregate temporary service. in any calendar year after 1-7-75 or minimum 70 days. aggregate temporary service in any continuous block of 36. calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait had and it was also agreed that wait list. was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 33-12-1994. The Petitinner has no valviand enforceable right for apprintment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary. entiplityees were working in leave vacancies and not unregular permanent vacancies. In terms of aforesaid settlements, out of 744 wait hated candidates, 357 temporary. employees were appointed and since the Petitioner was wait listed at 431 he was not appointed. The said seulements. were *bona fide* which were the only workable solution and is hinding on the Peutioner. The Petitioner is estopped. from questioning the semiennents threetly or indirectly and his claim is hable to be rejected. Further, the said settlements. were not questioned by any union so far and the settlements. of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workman) Act. 1981. does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified. before the Petitioner was engaged. It is also not correct to

say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Peninoner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

- In the additional claim statement, the Petitioner. contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out. by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV. post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously. with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services. of the Peritioner as he has acquired the valuable right. coshrined in the Constitution of India. In the year 1998, the Respondent/Rank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait. listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and funcies. Hence, the Peritioner prays that an award may > passed in his favour.
- 6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India. Staff Federation were under section 18(1) of the Act and not under section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.
- In these circumstances, the points for my consideration are;
 - (i) "Whether the demand of the Petitioner in Wait List No. 431 for restoring the wait list of temporary messengers in the Respondent/ Bank and consequential appointment thereupon as temporary messenger is justified?"

- (ii) "To what relief the Petitioner is entitled?"Point No. 1:
- In this case, on behalf of the Petitioner it is: contended that the Petitioner in this case and the Petitioners. in the connected industrial disputes have been sponsored. by Employment Exchange and they having been called for interview and having been selected and wait listed in terms. of the relevant guidelines/circulars of the Respondent/Bank. in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Count. to protect the legal and constitutional rights of the workmen. concerned and while the matter was pending in Writ Petition. No. 542 (Civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. Ml. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.
- On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case. the Petitioner is not bound by settlement under section. 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service. exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V A of the LD. Act and it is proposterous to contend that the Petitioner has no valid and enforceable right for appointment as Section 250 and 25H are very much applicable to the Petitioners who are retrenched messengers.

and are eligible to be reinstated. Learned representative for the Petitioner, contended that in 1996 LAB & IC 2248 CENTRAL HANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the LD. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies. but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character, Fujther, a combined study of Ex.Mi and the averments of MWI and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Peritioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M. deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last comefirst go' or first come- last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex. M1 provides an apportunity to persons who were engaged on cusual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Stat marters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving as qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondents' Bank has alleged to have prepared only one wait list for each moduld as per Bx. M 10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-9) which are marked as Ft. Ml, M3 and M4 respectively. But, when MW1 has spoked about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called noninclusion except his bald statement. Further, according to MW1 wait list under Ex M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Forther the Hon'ble High Court has held in its order dated 23-7-99 ir. W.P No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary. class IV employees who were paid scale wages as per-Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 senlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India 1 Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on hehalf of the Petitioner that as per deposition of MW I wait list under Ex.M10 comparises of both messengerial and non-messengerial candidates .While the temporary employees were appointed after due process of selection and were paid wages on the hasis of industry wise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 & 16 of Constitution of India, Therefore, the Petitioner contended that preparation of Ex. M.1. namely wait list is not inconformity with the instructions of Ex. M2 and nonpreparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No.11932/91 in W.P.No.7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennal and Madural and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Responden/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees.

the expression that they were engaged in feave vacancy was used as a device to take them out of the principal clause 2 (on) of the LD. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Pantianer has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Faither, the representative of the Petitioner relied on the rulings reported in 19854 SCC 201 H.D. SINGHV3, RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held thus "to employ workmen as "badlies" cuspals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent, workmen is illegal "Learned representative further conrended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with tongest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up as contrary to law and also had in law. Thus the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in other violation and in breach of it. Though clause 2(c) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/ future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have relused it and the name shall stand deleted from the respective panel and he shall have on further claim for being considered for permanent appointment in the hank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till dare, it is a mustery as to who that senior was and there is no documentary evidence in support of the averment and also for the averagent of MW 1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/ Bank is arbitrary, mala tide and illegal and the Respondence Bank has not acted in accordance with the terms of Observed on absorption of temporary employees. Though he Respondent/Bank has produced lix. M6 which alleged to be a copy of minutes of conciliation proceedings dated 7-6-75 before Regional Labour Commissioner (Central), Hyderabud, it is neither a 18(3) settlement nor 12(3). semlance trass lainted by the Respondent/Bank which says. only with regard to modification of Ex. MI to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madrax in WMP No.11932/91 in W.P. No.7872/91 ceased to have any referance when the main writ has been disposed. of in the year 1999 and therefore, they do not have any bearing in the case of the Petirioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked 45 E.A. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary refreement scheme. In the Respondent/Bank it was implemented only in the year 2001

and it constitutes post reference period and hence evidence of Respondent/Barik has no application to the Peritioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months. as enshrined under Section 25B and 25F of the Industrial Disputes Act, therefore, their retreachment from service is illegal and against the mandatory provisions of Section 25. and therefore, they are deemed to be in continuous service. of the Respondent/Rank and they are entitled to the benefits under the provisions of LD. Act. It is further contended on behalf of the Pecitioner that though some of the Pecitioners in the connected LD, have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLI 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vo. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression factually worked under the employer' cannot mean that those days only when the workmen worked with harmmer, sickle or penbut must accessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment us sub-staff in early 1980s but were denied turther engagement on account of settlements/lapsing of wait lists and out of these Potitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream They have also not gainfully employed. In such circumstances, this Triounal has to pass an award in their favour.

10) But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are expopped from making claim as they had accepted the seulements drawn under the provisions of Section 18(1) and 18(3) of the 1.D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bonatide and are made with ulternormotive. Pupplier, they have concealed.

the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The sentiement entered into by the Respondent/Bank and the Federation were honafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlerment and accordingly he was want listed and therefore. the Petitioner is estopped from questioning the settlement directly or incincetly and his claim is hable to be rejected. Partition more, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 LLLJ 323 ASSOCIATIED GLASS. INDUSTRIES (.1D. Vs. INDUSTRIAL TRIBUN M. A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workman and the workspectresigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhor Pradesh High Court and held that I in the absence of iplea that the softlement reached in the course of concidiation is vitiated by frame. mistepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLU 1189. ASHOK AND OTHERS Vs. MAHARASHURA STATE TRANSFORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the condition proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of commacts, the object obviously is to uphold the sanctify of settlements reached with the active assistance of the ensulaliarien officer and to discourage an individual employee or a minority union from soutdurg the settlement. The It forther held that "there may be exceptional cases, where page may be allegations of male tides, fraud or even corruption or other inducements. But, in the absence of such allegations, a sottlement in the course of collective hargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the ratings reported in 1997 I LLJ 308 K.C.P. LTD, Vs. PRESIDING OF ICER AND OTHERS wherein the Suprema Court has held that "settlements are divided into two categories namely (ii) those arrived at outside the conciliation proceedings under Section 18(3) of the LD. Art and (ii) presentation proved for in the course of consultation proved fires under Section 18(3). A sertiement of the tirst category 168. lingual application and binds merely parties to at accorseptember 1 of the second category made with a recognised mail orbigate locket has extended application as a wall by blocking on all workmen of the establishment. Even in case of the first dategory, if the kerrioment was reached with a representative crapp of which the contesting workmen were members and if there was nothing unreasonable or enfair in the terms of the sentement, it must be bloding on the contesting workmen also. The further seized on the cubings recorded in ATR 2000 SC 469 NATBONAL ENGINETARING INDUSTRIES LTD. Vol STATE OF RAJASTHAN AND O'THERS wherem the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bonshide in nature or that it has been arrived at on account of traud. misropresentation or conceatment of facts to even corruption and other inducements, it could be subject matter of yor another industrial dispote which an appropriate Gove. may refer for adjudication after examining the allugations as there is an underlying assumption that the settlement reached with the help of the concibation officer must be tair and reasonable. "Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the sendemont, since the Federation in which the Petri man is also one among them. they have entered into scall-ment with the bank and therefore, it is building on the Peritagner, Further, to argued that for enion of the bank has questioned the settlement and misucally representes, it cannot be said that it is not binding on them and he is estopped from disputing the

11. Learned coursel for the Respondert further contended that though the reference made in this case and other connected disputes is "whether the demand of the workman with worthst No given for restoring the wait list or (emporary messongers in the establishment of Respondent/Bank and consequential appointment thereugon as temporary messenger is justified?" The Petinoner contended that the refrectionent made by the Respondent Bank is not collid and he has to be in instanced in service with full back wages the Hence, the Petinoner's content on against the reflection made by the foest its soft welf. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petinoner's and not reinstatement as alleged by the Petinoner's and not reinstatement as alleged by the Petinoner's the Court statement in alleged by the

12. But as against this on behalf of the Pentioner it is contended that mete working of reference is not decisive in the matter of terminity of a reference and the relief on the railings reported in 1998 ILAB IC 345 SPORFIARY. KOHLAM BILLA BOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAM. TRIBUNAL, KOHLAM wherein the Kerala High Court has held from imore working of reference is not decisive in the matter of renability of a reference. Liven though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material better in they only our dary and that is to decide the points on maths and not to find our some securion defects in the working of reference, subjecting the point

workman to hardship involved in moving the machinery again." It further held that "the Tribugal should look intothe pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead. of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service. or not for which he relied on the rulings reported in 1998. LABIC 1664 VANSAGNATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS., wherein the Madhya. Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHANLY, PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "It has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manger, but should consider the order of reference in a fair and reasonable manner." He also argued. that in Express Newspapers P. Ltd.'s case reported in AIR. 1993 SC 569 the Suprema Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view. it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Politicuers have been retreached from the Respondent/ Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged. by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank. I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the ratings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V.VIJEESH wherein the Supreme Court has

held that "the only question which falls for determination. in this appeal is whether a candidate whose name appears. in the select list on the basis of competitive examination. acquires a right of appointment in Govt. service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made. in view of the impending absorption of steam surplus staff. and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has beld that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel. was not to confer on them any right to seek permanent. appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that. it was a yearly panel expiring on 6-2-98, we are of the opinion. that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and, therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings. reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in mark list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question. the wait list and since there is no male fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide. motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait fist and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB [C 2168 STATE OF HARYANAAND ORS. V1. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming tothe direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to austain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc/ temporary couployee who has been continued for one year. should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he

appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time. of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale. unconditional orders. Moreover, from the merecontinuation of an ad hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one casé, a direction was given to regularise employees who have but in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow prespective of and without taking into account the other real vant dijoumstances and considerations. The relief must be moulded in each case baying regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Churts. He further relied on the decision reported in 1997 ITSCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench. of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employeds whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such almon-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them. or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a mullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relief on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS V: STATE OF BIHAR AND ORS, wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot he construed to be a retrenchment under the LD. Act. The

concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the ratings reported in 1994 3 LLJ (Supp.) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the LD. Act retrenchment procedure following principle of "tast come-first go" is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retreaching seniors and retaining juniors. Though in this case, the Peritioner has alleged that his junious have been made permanent in hanking service, he has not established with any evidence that his juniors were made permanent by the Respondent/ Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

Learned Senior Advocate firther argued that even. in recent decision reported in 2006 4 SCC 1 SECRETARY. STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that "merely because a temporary employee. or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to un end or of ad how employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts un engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whalever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpentate illegalities and to take the view that a person who has temporarily or easually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a groper competition among qualified persons, the same would not confer any right on the appointee...... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a doc

process of selection as covisaged by relevant rules. Further, in CDJ 2006 SC 443 National Pertilizers Ltd. and Others Vs. Somvir Singh, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a mullity, the question of confirmation of an employee upon the expiry of purported period of probation. would not arise." Further, in CDJ 2006 SC 395 Municipal Council, Sujanpur Vr. Surinder Kumar, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post, Being a 'State' within the meaning of Article (2 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Article 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 Madhya Pradesh State Agro Industries Development Corporation Vs. S.C. Pandey wherein the Supreme Court has held that "only hecause an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also beld that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privarisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list propered by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait fist and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by sculements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner

17. I find much force in the contention of the learned counse! for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait fist and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was

not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the Changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Covernment in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2:

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007)

K. JAYARAMAN, Presiding Officer

Witnesses Extended:

For the Petitioner

WW1 Sri L, Babu

WW2 Sri V. S. Ekamberam

For the Respondent :

MW! Sri C. Mariappan

MW2 Sri C. Ramalingum

Documents Marked:

Ex. No. Date

Description

VI 1-8-88

Xerox copy of the paper publication in

daily Thanthi based on Ex. M1.

. 20		THE GAZETTE OF INDIA : AUGUST 4.	2007/SB	AVANA	13, 1929		
) 20 		Years copy of the administrative		17-3-97	Xerox copy of the Service particulars— J. Velmurugan.		
		guidelines issued by Respondent/Bank for implementation of Ex. Mt.	Wl9	24-3-97	Xerox copy of the letter advising selection of partition Menial—G. Pandi.		
13	24 -4 i91 :	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in	W20	31/3/97	Xerox copy of the appointment order to Sri G. Pandi.		
	i	Messenger vacancies. Xerux copy of the advertisement in The	₩2i	Peb. 200	15 Xerox copy of the pay ship of 7. Sekar for the month of February, 2005 wait list		
V4	1-5 - 01	Hindu on daily wages hased on Ex. W4.	W22	13-2-95	No.395 of Madurai Circle. Xerox copy of the Maduria Module		
N 5	30- \$ -91	Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wagers.			Circular letter shout Engaging temporary employees from the panel of wait list.		
W6	: 15 -3- 97	some since for letter of 7,000]	W23	y <u>-</u>	 Xerox copy of the Head Office circulat No. 28 regarding Norms for sanction of messenger staff. 		
	: 29i3-97	vacancies of messenger posts. Navos conv. of the circular of	₩ 24	9-7-92	- Cata an increase of the Birshtite		
W 7	2#3-91	Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.	W 25	9-7-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for innlementation of norms-organism of part		
₩8	Mai	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work.	W26	j 7-200	time general attendants.		
W9		93 Xerox copy of the service certificate issued by Periamet Branch. 93 Xerox copy of the service certificate	W2	7 31-12	2-85 Xerox copy of the local Head Office		
W !(issued by Avadi branch.			temperary employees in subordinate cadie.		
W)	1 25-1-	Xerox copy of the letter from Petitioner to Respondent/Management for service	For	For the Respondent/Management :			
	'	certificate.		No. D	Description		
wi	2 N ¥	Xerox copy of the postal acknowledgement.	Mi Mi		1-87 Xerox copy of the settlement. 7-88 Xerox copy of the settlement.		
	.a. 1670	Yerox cany of the administrative	M		USS - Nerox copy of the settlement.		
W		mundelines in reference book on state	M		[49] Xetax copy of the settlement.		
		maners issued by Respondent Bank	M		7.96 Nerox copy of the sentement.		
		regarding appointment of temporary employees.	М		6.95 Xerox copy of the minutes of conciliate proceedings.		
W	14 Nil	Xerox copy of the Reference book on Staff maters Vol. III consolidated apto	М	77 28-	5.91 Xerax copy of the order in W. No.7872/91.		
13,	/15 63	31-12-95. 7 Xerox copy of the call letter from Madural zonal office for interview of messenger		(g 15	-5.98 Nerox copy of the order in O. No. 2787/97 of High Court of Orissa.		
	÷	post V. Moratikannan.	N	49 (10	17-99 Xerox copy of the order of Supreme Co in SLP No. 3082999.		
<i>\</i>	V16 + 6-3	-97 Xerox copy of the call letter from Madurui zonal office For interview of messenger post—K. Subburaj	ť 3	410	N3 Xerox copy of the wair list of Chen Module.		
V	N17 60	and the second s	ni) er	M11 25-	 10.99 Xerox copy of the order passed in C No.16289 and 16290/99 in W No.1893/99. 		

 $post \rightarrow J. \ Velmunigan.$

नई दिल्ली, 24 जुलाई, 2007

का, 31, 2205,—अँक्बोगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एरोनॉटिकस कम्यूनिकेशन स्टेशन के प्रचंधतंत्र के संबद्ध नियोधकों और उनके कर्मकारों के बीच, अनुबंध में निर्देश्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/क्षम न्यायासय नं—1 चण्डीगढ़ के पंचाट (संदर्भ संख्या आई.डी.सं. 73/98) को प्रकाशित करती है, जो केन्द्रीय अरकार को 24-07-2007 को प्राप्त हुआ था।

[सं. प्रन-11012/12/97-आई आर (एम)] एन. एस. मोरा, डेस्क अधिकारी

New Delhi, the 24th July, 2007

S.O. 2205.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 1, D. 73/98) of the Central Government Industrial Tribunal-cum-Lahour Court, No. 1, Chandigarh as shown in the American to the Industrial Dispute between the employers in relation to the management of Aeronautical Communication Station, Nuh, Gurgaon, and their workmen, which was received by the Central Government on 24-07-2007.

[No. L-11012/12/97-IR (M)] N. S. BORA, Desk Officer

ANNEXURE

BEFORE SHRI RAJESH KUMAR, PRESIDENC OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-1, CHANDIGARH

Case No. I. D. 73/98

Shri (akshmi Chand S/o Sh. Ram Parshad, R/o Village and Post Office Maheshpur, THE, Palwal, Distr. Faridabad.

... Applicant

Versus

The Officer Incharge, Aeronantical Communication Station, Nuh, Distr., Gurgaon Haryam-122001

... Respondent

APPEARANCES

For the workman

Shri D.R. Sharma

For the management

Shri Jagdish Manchanda

: S. AWARD

Passed on 4-7-2007

Central Government vide notification No. L-11012/ 12/97-IR (Misc.) dated 18-3-98 has referred the following dispute to this Tribunal for adjudication:

> "Whether the action of the management of Aeronautical Communication Station, Nuh, Airport Authority of India, in terminating the services of shri Lakshmi Chand, Casnal Labour w.e.f. 1-9-1996 is legal and justified? If not, to what relief the workman is entitled to?"

- It is submitted in the claim statement by the workman that he was working with the management since 4-9-92 as Chowkidar as daily wage basis at Transmitter Centre Aeronautical Communication Station, Nob., Diatt. Gurgaon and his work and conduct is satisfactory. That the management on 1-9-1996 terminated his services without assigning any reason. That the workman was appointed on a temporary post and has completed more than 240 days in a calendar year. Therefore, the above termination is illegal unwarranted, unconstitutional, malafide, arbitrary and against the provision of law and also against the principle of natural justice as no notice, no charge sheet or enquiry was held, some junior to the workman are still working and the management have not adopted the procedure of last cum first. Therefore, the management has contravened the provisions of Section 25-G, H and F of the I.D. Act. The management also withheld the wages of workman for the period 20-7-1996 to 31-8-96. The workman approached the ALC Robtak for the conciliation proceedings and the management has given the detail of the workman before the ALC for the period September 92. to December 1993 in which it clearly shows that the workman has worked for more than 240 days. The workman orayed for setting aside the termination order and for reinstatement of the workman for full back wages all consequential benefits.
- In the written statement management in preliminary objection submitted that claim statement is not maintainable as the workman was engaged as casual labour. in tieu of Ramphai and Jagdish who were proceeded on leave and workman was engaged on leave vacancy. It was made clear to the workman that they have been engaged as casual labourer w.e.f. 4-9-92 with clear out instructions till these two Chowkidars reports for duty, therefore, there is no case for the alleged workman with full backwages . It is also submitted that workman who was appointed as casual. labourer and his services were dispensed with in the month. of November 1992, he attended the office for 29 days and was paid the wages of Rs. 1015. Dishonestly and eleverly the workman has tempered the attendance register and written his own name over the name of Raicsh Kumar who had actually performed the duties of casual labourer. The workman was again engaged as casual labourer in Dec. 1992 and performed his duties as casual labourer till. December 1993. The said Jagdish Chand Chowkidar. reported for duty on 30-9-92 and Ram Phal on 3-10-1992. The workman has not completed 240 days therefore, the management has not complied with provisions of the J.D. Act 1947 as he was appointed against the leave vacancy. and as and when the person reported back on duty, the workman was not entitled to continue on the same post. It is also submitted that the reference has been raised by the workman after a gape of more than 4 years. On merits also, it is submitted that workman was engaged as chowkidar in leave vacancy and his work and conduct was not satisfactory. The appointment letter clearly stigulates that the engagement was made till two Chowkidars reported

back for duty and as regular Chowkidars reported back for duty on 30-9-92 and 3-10-1992, his services have been terminated, the workman was never employed by the management w.c.f. 1-4-1994 to 18-12-1994, therefore, there is no question of termination of his services, the workman was paid wages for the actual days be worked with the management.

- Rejoinder also filed by the workman reiterating the claim made in the claim statement.
- 5. In evidence the workman filed his own affidavit in evidence and also appeared as his own witness as WW1. On the other hand the management filed in evidence one affadavit of A.S. Yadav Officer-in-charge, Airport Authority, National Airport Chandigarh who also appeared as MW1 in evidence on behalf of the management. Both witnesses of the workman and the management cross-examined at length by the counsel for the parties.
- 6. Workman filed written arguments. On the other hand the management did not file written arguments, rather requested that the case may be decided on the basis of written statement and affidavit of the management and on other record.
- In written arguments it is submitted by the workman that the was engaged as Chowkidar on 4-9-92 and continued working till 31-8-1996 when his services were terminated without making compliance with the provisions of Section 25F of the l.D. Act 1947; that he had completed more than 240 days in 1993, 1994 and 1995 and also 240 days preceding to the date of termination i.c. 31-8-1996, that the management failed to produce the relevant record despite repeated opportunities to the management and the management in order to frustrate the claim of the workman leveled the allegation of tempering the official record though to action has been taken by the management and no FIR was lodged. That in reply before the ALC the management admitted of having completed 240 days by the workman. That the management tried to show the workman under the contractor from Jan. 1994 to 31-8-1996, that no agreement or contract was produced by the management, Ex. W9 the documents of the management shows that workman worked from Feb. to July 1996 and Ex.W10 shows that workman was appointed on 8-10-1992 w.e.f. 4-9-92 and R1 also shows that he performed his duty from March 1996 to 30-8-96 and the existence of the documents dever questioned by the management; rather it is admitted that the signatory of the affidavit is not aware whether the workman was engaged as lubour contractor baving valid license and it is further admitted by the management that whenever a contractor is engaged for any work an agreement is executed and the witness of the management has shown his unawareness about executing of agreement with the workman. It is further submitted that the workman never tempered with the record as he is illiterate. The AR of the workman also placed reliance on the cases of 1999(2) SLR 01, AIR 1997 S.C. and a judgment of CAT reported in 2002(3) ATJ 441. In this case learned counsel for the management did not file written arguments

and had only relied upon his written statement, affidavit, mall evidence and judgments of the Hon'ble Supreme Court. As per schedule this court has to adjudicate upon the issue whether the action of the management of Aeronautical Communication Station. Nuh. Airport Authority of India, in terminating the services of Shri Lakshmi Chand, Casual Labour w.e.f. 1-9-1996 is legal and justified? If not, to what relief the workman is entitled to?

 I have found that as per reference received for adjudication both the parties are disputing the date of termination. The management has denied that workman worked as a casual followerer wielf, 31-8-96 and axion 1-9-96 his services were terminated. Contentions of the management in their written statement and in comments also filed before the ALCO during the conciliation proceedings are that workman was engaged, as a casual labour to perform the duty of a Chrowkidar in leave vacancy and worked w.c.s. 4-9 92 to 18-12-1993 as detailed in written statement as well as in comments filed before the ALCO. Document Ex. M 2 proves approval of engaging on leave vacancy. The contentions of the workman are that he worked w.e.f. 4-9-92 to 31-8-96 and his services were terminated without assigning any reason on 1-9-96. The workman has also taken a plea that workman has completed 240 days in a calendar year and this fact has been admitted by the management in written statement I comments filed before the ALCO. On perusal of the comments I found that management has no where admitted that workman has completed 240 days in a calendar year or preceding to the date of termination, rather in the comments filed before the ALCO and written statement before this court, it is submitted by the management that Lakshmi Chand remain engaged as casual labour at ACS Nah against leave vacancy of regular Chowkidar all 18-12-1993 and thereafter M/s. Lakshmi Chand Labour contractor Maheshpor (Paiwal) was engaged on contract basis in provide watch and ward to ACS. Note from January 1994 till the contract was dispensed with effect from 31-8-96. He was never employed temporarily by the Deptt, w.e f 1-4-92 to 18-12-93, thus question of termination does not arise and management has given the detail of working days in written statement as well as in comments. The management has taken a plea that work man has tempered with the attendance register to increase his attendance. Though the management did not filed original acquaintance Rolls and workman has filed photo copies of those acquaintance rolls management Ex.W1- W. 8 wherein I have found over writing of workman on some others name on very linst page of Sr. No. 7 name of a workman Rajesh Kumar had been written. It was struck out und Laxmi Chand is written and thus appear clearly with naked eye. Similar is the situation on page 2 and 3. On page 4 name of 1 axmi Chand worksnan is written in different hand which also show that some other name below was removed. Similar is the situation on page 5, 6 and March 93 show the name of the workman Lakshmi Chand at St. No.4 showing 29 days working and it is correct and this page appears to be genuine.

- 9. Workman has not given any explanation how his name appearing over the name of Rajesh Kumar at several pages and these documents attendance record may be photo copies is being produced by the workman on the record himself.
- 10. Further work man has taken a stand that throughout up to date of the termination he worked as casual worker whereas contention of the management are that workman worked thereafter as a contractor. He was given contract and he also deposited the security and also received on termination of contract his security that. I have also seen the document Ex. M2 is a letter dated 8-10-92 addressed to Nuh Airport Authorities regarding engagement of two casual labourer in absence of chowkidar in ACS Nuh and Ex. M3 is the copy of application wherein workman requested to refund of his security money of Rs. 3840 which was refunded to him. In the evidence of the workman it has also come that Air Port Nuh is not in existence now.
- 11. Learned council for the workman submitted that as proved and also has admitted by the management that workman completed 240 days and management terminated his services without complying with the provisions of Section 25-F, his termination is void ab-nitio w.e.f. 1-9-96 and workman should be reinstated with full beck wages. On the other hand contention of the management are that workman was never appointed on temporary basis, he was simply engaged on leave vacancy which run upto 18-12-93 and thereafter he worked as a contractor by a contract which was executed and he has also not denied but his contentions are that workman was not a valid licensees and transaction is a sharp transaction., Management has relied JT 2005 (11) Supreme Court DGM Oil and Natural Gas Corporation Ltd, Vs. Flus Abdul Rehman wherein it has been held that no, of days worked put in broken period. can not be taken as continues employment for the purpose of Section 25-F, in Himanshu Kumar Vidyarthi Vs. State of Sihar the Hou'ble Supreme Court has held that where petitioner was not appointed in accordance with the statutory Rules but were engaged on the basis of need of work on daily wages there disengagement from service not a retrenchment under I.D. Act. Since they are only daily wage employees baving no right to post, their disengagement can not be held arbitrary. In menager R.B.I. Bangalore Vs. S.Mani JT 2005 (3) 248 it is held that non regularization of service of respondents for alleged misconduct of producing false certificate in criminal proceedings court however acquitting the respondents giving the benefit of doubt, request of respondent for reemployment turned down is correct. Management also refired on the constitutional bench case of Hon'ble Supreme Court in Uma Devi Vs. State of Kamataka. On the other hand workman has referred to 1999(2) SLR contact labour employed for maintenance work, the maintenance work can not by any stretch be ascribed to be of seasonal nature. In AIR 1997 Supreme Court 645 Air India Statutory Corporation Vs. United Labour Union it is held that Act is

- a social welfare measure, interpretation, shift of judicial orientation must be from private law to public law interpretation. Workman also relied on a CAT judgment that applicants were appointed as sweepers on daily wage basis, thereafter department changed their nature of employment and treating them as casual labourers, claim regularization and regular pay scale of group D employee allowed.
- To view of the shove judgments referred by both the parties. I have found that in the case of the judgment of $||\cdot||$ the Hon'ble Supreme Court in Himanshu Kumar Vidyarthi and Uma Devi Vs. State of Karnataka decided by a constitutional Bench of the Hon'ble Supreme Copurt it is now held that appointment made on the basis of need of work, terroination of their services can not be construed as retrenchment. The petitioner were not appointed in accordance with the rules but were engaged on the basis of need of work, on daily wages, their disengagement from service held not retreachment under the LD. Act as they have no right to the above post. Similarly more strong view was taken by the Hon'ble Supreme Court in Constitutional Bench case in Uma Devi Vs. State of Kamataka against irregular, stop gap atrangement where statutory rules were not followed instead some other methods were adopted in making appointments temporarily, workman so appointed have no right to post. I have also found that workman also made it clear that there is no existence of Nun Airport and it appears to be disbanded and not functional and that management by evidence of Ex. M2 has proved that there was a leave vacancy for casual engagement and on that leave vacancy proved on record workman was engaged in the beginning as a casual labourer and thereafter engagement made as a contractor without verifying that he is without license for a long periods which is illegal act at the part of Nuh Airport authorities. It is further established that Nuh Airport is no more in existence. It has come in evidence that at several places in the attendance register the name of the workman is written after striking out the name of other workman and there is so explanation from the side of the workman. If this illegal tempering with the attendance of several year is kept in mind, he has not completed even 240 days in any calendar year. Further the case of the management is that workman was engaged as casual labourer w.e.f. 4-9-92 with clear cut instructions that he is appointed till chowkidar who were on leave return back and when regular chowkidar returned his services were dispensed with. The management proved that workman worked upto December 1993 as well thereafter and there is tempering with the record by him as his name is written after striking out the name of one Rajesh Kumar in several months and workman is relying that attendance alleged to existed due to alleged tempering. No FIR lodged taking a lenient view does not make the act legal, and clearly without this period workman did not say that he worked for 240 days. In the circumstance he also not disprove the contentions of the management that he worked after the period as submitted by the management as a

contractor labour taking contract himself depositing the security and when contract is over withdrawing that security amount. Here workman desires that his omissions & mistakes should be forgotten & Management same mistakes be taken seriously. In the circumstance, I am of the considered view that management has proved that workman was engaged as a casual labourer in leave vacancy and worked up to December 1993 and thereafter he worked as a contractor and this simulation is created by the faults & bad contentions of both parties and therefore, there is no question of termination of his services as on 1-9-1996 as thereafter contract was over and he also withdrew his security deposit.

13. Further I am of the considered view that workman has failed to prove that the action of the management of Aeronautical Communication Station, Nult. Airport Authority of India, in terminating the services of Shri Lakshihi Chand, Casual Babour w.c.f. 1-9-1996 is illegal and unjustified, management has denied having passed any such under and as per their record his termination is much prior in December 1993. There is no violation in termination on 1-9-1996 of the services of workmun of Section 23-G, H & F of LD, Act. Therefore, I am of the considered view that management proved that termination was just & legal as contract may be illegal was over & workman had no right for reinstalement. Therefore on the other hand workman failed to prove this reference in his favour, therefore, he is not entitled to any relief. The reference is thus answered in favour of the management and against the workman. Central Govt, be informed. File be consigned to record.

Chandigath. RAJESH KUMAR, Presiding Officer

नई दिल्ली, 24 जुलाई, 2007

का आ. 2206.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 को 34) की धरा-1 की उपधारा (3) द्वारा प्रदेश शकितयों का प्रयोग करते हुए, केन्द्रीय सरकार एउर्द्वारा । अगस्त, 2007 को उस तारीस के स्त्य में नियम करती है, जिसको उस्त अधिनियम के अध्याय-4 (44 व 45 धारा के सिकाय जो पहले से प्रवृत्त हो चुकी है) अध्याय-5 और 6 [धारा-76 की उपधारा (1) और धारा-77, 78. 79 और \$) के सिकाय जो पहले ही प्रवृत्त हो चुको है] के उपबंध उद्दीसा में निम्नलिखिड क्षेत्रों में प्रवृत्त होंगे, अधीर,

"ब्रह्मणढ् जिले के पानपोष तहसील में कुआरमुण्डा, चड़ि हरिडम्पर, बीजाबहल, केलीपोष, कालोसिडिस्या, बमुनानाकी से गुजस्व गाँव शामिल हैं।"

[संख्या एस-38013/23/07-एस.एस.-1]

एस. दो, जेवियर, अवर सचित्र

New Delhi, the 24th July, 2007

S.O. 2206.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act. 1948 (34 of 1948) the Central Government hereby appoints the 1st August, 2007 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI [except sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Orissa namely:—

"The Revenue Village of Kuarmunda, Chadri Hariharpur, Bijabahal, feliposh, Kalosahiria, Japannanaki in the Tahsil of Panposh, Kuarmunda in the District of Sundergarh."

[No. S-38013/23/2007-SS-1] S. D. XAVTER, Under Secy.

नई दिल्ली, 24 जुलाई, 2007

का, भा. 2207.—कर्मचारी राज्ये दीमा अधिनियम, 1948 (1948 का 34) की धारा-1 की उपधार (3) द्वारा प्रदात शिक्तरों का प्रयोग करते कृए, केन्द्रीय अरकार रतदृद्वारी 1 अगस्त, 2007 को इस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय-4 (44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी है) अध्याय-5 और 6 [धारा 76 की अपधारा (1) और धारा-77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त हो चुकी है] के उपवंध परिचय बंगाल के निम्नांशिक्त क्षेत्रों में प्रवृत्त होंगे, अर्थात,

"बस्टनगर क्षेत्र का अवशेष गैर कार्यान्वित क्षेत्र, अर्घात् मीरपुर तृंगी को मीने, बंगाला और जगतला, महेशतला पुलिस स्टेशन जिल्ला दक्षणि 24 परगता ।"

[संख्या एस-38013/22/07-एस एस. 1] एम. दो. जैमियर, अवर संचित्र

New Delhi, the 24th July, 2007

S.O. 2207.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act. 1948 (34 of 1948) the Central Government hereby appoints the 1st August, 2007 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI jexcept sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force of the said Act shall come into force in the following areas in the State of West Bengal namely:

"Remaining unimplemented area of Batanagar, i.e. Mouzas of Mirpur Nungi, Banagla and Jagtala of Mahestala P.S., District - South 24 Parganas".

[No.S-38013/22/2007-SS-1]

S. D. XAVJER, Under Secy.